LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 14 1969
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1969

No. 845

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BONN BROWN
Elkins, West Virginia

MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Petitioner

TABLE OF CONTENTS

Page

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 31

1. The motion to suppress the search warrant should have been sustained. 31
2. Adverse publicity given defendant prior to and during trial deprived him of a hearing before an impartial jury. 32
3. The District Court erred in failing to grant the Defendant's motion for judgment of acquittal on all counts against him which were not proven by the Government. 33
4. The Court erred in refusing Defendant's request that the jury be instructed specifically regarding the dangers and shortcomings of circumstantial evidence and in advising them that such evidence should be scanned with caution. 37
5. The Court's charge did not confine the jury's deliberation to the elements of a Federal crime but was a charge of such a general nature as to permit unlimited speculation based upon the inconsistencies and inadequacies of State Government records and items which might constitute a violation of State statutes by the Defendants and others. 38
6. The District Court committed error in permitting the Government to introduce a Xerox copy of a copy of a letter which was unsigned and which was alleged to be a letter from the Defendant, Yokum, to Elmer West dated October 17, 1966, and in permitting the United States Attorney to use the same as an integral part of the proof of guilt in his closing argument. 38

Page

7. The Fourth Circuit Court's opinion and judgment that the District Court did not err in its ruling except as to Count 3 of the indictment and overruling all other errors assigned is not supported by the applicable principles of law and evidence. 40

CONCLUSION 41

TABLE OF CITATIONS

Cases

Adams v. Hotel Sherman, Inc., 138 Fed. 2d 524 (7th Circ.) 39

Atlanta v. Crawford, (DC-GA) 1927, 22 F.2d 834 32

Anderson v. U.S., 30 Fed. (2d) 485 36

Apodaca v. U.S., 188 F.2d 932 35

Boyd v. U.S., 1886, 6 S.Ct. 524, 116 U.S. 616, 29 L.Ed. 746 32

Byrd v. U.S., 342 F.2d 939 35

Campbell v. U.S., 373 U.S. 487 40

Chimel v. California, 23 L. Ed. (2d) 685 32

Cobb v. Glen Boom & Lumber Co., 57 W.Va. 49 40

Estes v. Texas, 381 U.S. 532 33

Felton v. U.S., 96 U.S. 699 36

Forte v. U.S., (DCCA) 94 F.2d 236 35

Findley v. U.S., (1966) C.A. Colo. 362 F.2d 921 36

Gideon v. Wainwright, 372 U.S. 335 33

Go-Bart Importing Co. v. U.S., 1931, 51 S.Ct. 153, 282 U.S. 344, 75 L.Ed. 374 31

Gouled v. U.S., 1921, 41 S.Ct. 260, 255 U.S. 298, 65 L.Ed. 647 32

Grossman v. U.S. Slicing Machine Co., 365 Fed. (2d) 687 (3rd Circ.) 39

Page

Halfen v. U.S., (1963) C.A. Okla. 324 F.2d 52 36

Hand v. U.S., (1955) C.A. Colo. 227 F.2d 794 37

Harris v. U.S., 151 Fed. (2d) 837 31

In Re Murchinson, 349 U.S. 133 33

Lowrey v. U.S., (C.C.A. Ark.) 1947, 161 Fed. 2d. 30 32

Maguire v. U.S., (1966) C.A.N.M. 358 F.2d 442 37

Marron v. U.S., (Cal. 1927), 48 S.Ct. 74, 275 U.S. 192 32

Morrisette v. U.S., 324 U.S. 24, 72 S.Ct. 240, 96 L.Ed. 288 36

Offutt v. U.S., 348 U.S. 11 33

People v. Murawski, 394 Illinois 236, 68 N.E. (2d) 272 33

Potter v. U.S., 155 U.S. 438 36

Prevast v. U.S., 149 Fed. (2d) 747 (9th Circ.) 39

Rideau v. Louisiana, 373 U.S. 723 33

Screws v. U.S., 325 U.S. 91 35

Sheppard v. Maxwell, 384 N.S. 333 33

Smith et al. v. Carrington, 4 Cranch 63, 2 Law Ed. 550 40

Souza v. U.S., 9th Cir. 304 F.2d 274 36

State v. Barille, 111 W.Va. 567 (syl. 1) 33

State v. Bennett, 92 W.Va. 548, 117 S.E. 371 35

State v. Dudley, 96 W.Vt. 481, 123 S.E. 241 35

State v. Gunnoe, 74 W.Va. 741 35

State v. Maley, 151 W.Va. 593, 153 S.E. (2d) 827 35

Stubbs v. U.S., 2 Fed. (2) 468 35

Stutz v. U.S., 47 Fed. (2d) 1029 36

Trupiano v. U.S., 1948, 68 S.Ct. 1299, 224 U.S. 699, 92 L.Ed. 1663 31

Page

Turner v. Louisiana, 379 U.S. 466 33

Tyler v. U.S., 323 Fed. 2d 711 37

U.S. v. Doe, D.C. Tenn. 19 F.R.D. 1 32

U.S. v. Kelly, (D.C.N.C.) 1921, 277 F. 485 32

U.S. v. Lamb, (1957) 150 Fed. Supp. 310 36

U.S. v. Lefkowitz, 1932, 52 S.Ct. 420, 275 U.S. 452, 76 L.Ed. 877, 82 A.L.R. 755 31

U.S. v. Martin, (1967) C.H. Tenn. 375 F.2d 956 ..... 35, 37

U.S. v. Murdock, 290 U.S. 389 36

Weeks v. U.S., 1914, 34 S.Ct. 341, 232 U.S. 383, 58 L.Ed. 652 32

Weeks v. U.S., 10 C.A. 313 F.2d 688 ..... 35, 37

White v. Maryland, 373 U.S. 59 33

Texts

"Federal Practice and Procedure," Barron & Holtzoff, Vol. 4, Sec. 2402 32

29 A.J. 2d "Evidence," Sections 849 and 879, 486 to 491 incl. 39

31 ALR (2d) 417 33

Rule 52(b) 35

Supreme Court of the United States

October Term, 1969

No. .....

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To The Honorable Chief Justice and the Associate Justices of The Supreme Court of The United States:

Petitioner, Woodrow Yokum, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on October 16, 1969, in Case No. 12,740, styled United States of America, Appellee, v. Woodrow Yokum, Appellant (1a).

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears in the Appendix hereto (2a).

No written opinion was rendered by the Trial Court.

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the Trial Court in part was entered on October 16, 1969. This Court's jurisdiction is invoked under Rule 28, U.S.C., Section 1254(1) and by virtue of Rule 19(b) of the rules of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Title 18, Section 641, United States Code; Title 18, Section 2312, United States Code; Title 18, Section 2314, United States Code.

QUESTIONS PRESENTED

The Petitioner contends that the Court committed error in the trial of the case in the following respects:

1. The Court committed error in denying Defendant's request to be heard in chambers upon preliminary motions and matters which normally would be heard out of the presence of the jury.

2. The Court erred in denying Defendant's motion to suppress evidence relating to Count IV of the indictment based upon the illegality of the search warrant.

3. The Court erred in not admonishing the trial jury to ignore the newspaper, radio and television broadcasts relating to the progress of the trial.

4. The pre-indictment and pre-trial, as well as the trial publicity, available through news media created an atmosphere which so prejudiced the public that the Defendant could not get a fair trial.

5. The Court erred in failing to grant Defendant a judgment of acquittal as to all of the counts against him which were not proven by the Government, this motion having been made at the conclusion of the Government's case and again at the conclusion of all of the evidence.

6. The argument of Defendant's motion for judgment of acquittal received widespread and inaccurate newspaper, radio and television publicity and the Court's ruling thereon made out of the presence of the jury was also widely publicized.

7. The Court erred in his charge to the jury in the following respects:

A. The charge did not cover the fact that circumstantial evidence should be viewed with caution.

B. The charge relating to Count IV of the indictment improperly assumed that the possession of the property immediately after the alleged taking was in the Defendant when in fact the evidence shows that he was not in possession of the property until over one year after the alleged date of taking.

C. The charge did not advise the jury to ignore statements of the press, television or other news media in reaching their verdict.

D. By including in the charge a statement from the statute that "any property made or being made under contract for the United States or any department or agency thereof" should be considered as Government property,

which in this instance would cause the jury to believe that the statute applied to such property regardless of who had it in possession.

E. The portion of the charge indicating that the Defendant was charged with a sophisticated crime left the jury with an impression that the basic elements of a crime need not be proven for a conviction in this instance.

F. The Court's charge did not confine the jury's deliberation to consideration of elements of a Federal crime but was so general as to permit speculation based upon the inadequacies, etc., of State records and the violation of State statutes by the Defendant and others.

8. The Court committed error in admitting into evidence the Xerox copy of an alleged letter from the Defendant to Elmer West dated October 17, 1966, and in permitting the United States Attorney to use the same as an integral part of proof of guilt in his closing argument to the jury.

9. The Government in the presentation of its case failed to prove any Federal offense committed on behalf of the Defendant and specifically did not show the existence of criminal intent or knowledge on his behalf at the time of the alleged wrongdoing.

10. The title to all property and vehicles allegedy transferred, transported or sold had been transferred by the Government prior to any transportation or sale.

11. There is no showing of any acts of fraud committed by the Defendant nor of any profit or reward being received by him from his alleged actions.

STATEMENT OF THE CASE

The Defendant Yokum was an employee of the State Road Commission of West Virginia, having been given the title of Highway Supervisor. Prior to his working with the State Road Commission he had for many years been a Property Procurement Officer for the West Virginia Wing of the Civil Air Patrol, and because of his aptitude for this type of work was employed by the Road Commission to obtain surplus and excess property from the Federal Government to be used by the State Road Commission and related State agencies. During the period charged in the indictment he was a full time salaried employee of the Road Commission.

He was arrested upon a warrant issued by a United States Commissioner in February of 1967 and an indictment was returned against him at Wheeling, West Virginia, in October of 1967. Yokum was arraigned in the United States District Court on April 18, 1968, at which time he entered a plea of not guilty to the indictment and all counts thereof.

Prior to the arraignment Yokum by counsel moved for a bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, a portion of which was later furnished by the Federal Government.

Subsequent to this he moved for the entry of an Order directing the Government to return to him all of the property that they had seized that was not encompassed within the indictment against him, which motion was denied by the Court.

Thereafter Yokum moved under Rule 16(c) for the right of inspection and discovery of the items and documents that the Government would produce against him in this litigation and in response thereto the Government did furnish photographic copies of what it contended was all of said documents, and in return the Government moved for the

right to inspect all documents that would be used in evidence by Yokum, which motion was resisted by the Defendant and later overruled by the Court.

Other motions preliminary to trial were made by the Defendant, all of which will appear in the appendix to be filed herewith.

From the date of Yokum's arrest until the present the factual situation regarding his activities were given wide and in many instances inaccurate publicity, as will appear from the copies of newspaper items appearing from the time of his arrest up to and through the trial, which are filed as a part of the record in this action.

In detailing the facts produced at the trial regarding the indictment and the counts thereof the same will be set out herein relating to each count by its specific number and setting out the type of offense charged therein. Count VIII of the indictment was dismissed by the Court upon Defendant's motion and will not be dealt with in this presentation.

Counts I & II

Regarding the Chrysler sedan which was acquired at Fort Belvoir, Virginia, and brought to Randolph County, West Virginia. The Government for proof of Counts I and II offered the witness, Minter Rohrbaugh, Jr., who testified that he got the car and a Ford pickup for $900.00 and gave a check to Yokum for this amount. Rohrbaugh further testified that Yokum got the Chrysler car from Lt. Col. Nass and that the title for the car was also endorsed by Nass to the Beverly Auto Sales, which he operated; that this car belonged to Col. Nass, as did the pickup, and that he knew Nass.

The Government further offered the evidence of Mary De Young, an Assistant Property Disposal Officer from

Fort Belvoir, who stated that the standard Form 120 declaring the property surplus was made up in their office and sent to GSA and that they received a standard Form 122 from GSA showing the ordering agency to be the United States Bureau of Public Roads, Post Office Box 410, Buckhannon, West Virginia, and signed by Woodrow Yokum as Highway Supervisor. The Form 122 was written and had been signed by Morris Mark of GSA and the releasing document introduced by the United States Government showed that the Chrysler was turned over and shipped to the State Road Commission of West Virginia, who was the consignee. The release, which was O. K.'d by Virginia Allison, also an official in the Property Disposal Office at Fort Belvoir, Virginia, had prepared the release and a certificate of release, which was a Form 97, that transfers the title from the United States Government to the consignee, was made over to the State Road Commission and it is a document used to get title. GSA knew that the Chrysler was going to the State Road Commission and all papers were in accordance with the standard procedure and she personally knew Yokum and knew that he worked for the State Road Commission of West Virginia.

Virginia Allison, being an Assistant Property Disposal Officer, testified that she mailed Form 97 to the State Road Commission, which she herself had prepared and it was treated as a purchase order from the State Road Commission. It had been signed by Worden Fairfax as a Property Disposal Officer releasing this Chrysler to the State Road Commission of West Virginia. All of this was done in the normal course of business and in accordance with the current rules and regulations of GSA, and Fairfax as property Disposal Officer had the authority to execute the Form 97 release and this was the same procedure that they had followed for many years.

Simmons, who actually turned the 1962 Chrysler car over to Yokum on the shipping document 1149, which was regularly executed, said the car was to go to the State Road Commission of West Virginia; that he knew Yokum was an employee of the State Road Commission and knew that he had worked for them for many years.

George Bailey, a State Road employee, was introduced by the Government and testified that Yokum had been empowered by the State Road Commission to acquire surplus property from GSA and had not been given any instructions as to how he was to do this. He also stated that Defendant's Exhibit No. 3, which was a Form 97 certificate of release, was stamped with the State Road Commission stamp as received at the office at Buckhannon, West Virginia, on March 3rd. He stated that Post Office Box 410, Buckhannon, was the post office box of the Equipment Division of the State Road Commission and that the State Road Commission regularly received the pamphlets about surplus or excess property from GSA mailed to this box. He further stated that all surplus property received by the State Road Commission had been paid for and accounted for and that they had gotten a great amount of material for which there had been no charge made and that Yokum had always insisted that all inventory be listed and be placed of record. He did state that they had not received the 1962 Chrysler automobile.

Morris Mark, who signed the Form 122 for GSA, worked in Region 3, Washington, D. C., as a Utilization Officer. He stated that he and the other people who worked in GSA knew that Yokum worked for the State Road Commission and that the Box 410 was the State Road Commission's post office box in Buckhannon, West Virginia, and that he had approved many Forms 122 similarly made out showing the ordering agency as Bureau of Public

Roads, Post Office Box 410, Buckhannon, West Virginia, and that this was the same procedure that had been followed for many years and was in accordance with their normal business practices.

The Government next introduced Dallas Henke, who worked for the U. S. Bureau of Public Roads in Hagerstown, Maryland. He stated he knew nothing about the 1962 Chrysler and that Form 122 had not gone through his office in Hagerstown. He stated further, however, that the title to the property was in the GSA and that the physical control of the property was with the particular agency that had control of the property at Fort Belvoir, who had possession of the 1962 Chrysler; that the U. S. Bureau of Public Roads did not own any of this surplus property.

Worden Fairfax, the Property Disposal Officer at Fort Belvoir, Virginia, had known Yokum for five years and the 1962 Chrysler was picked up on a standard Form 122 which had been approved by GSA and that the Form 97 transferred title from the United States to the State Road Commission, was signed by him and was regular. He did state that in November, 1966, that he met Yokum in the Hunter Motel on U. S. 95 and Yokum asked him to destroy the shipping document 1149, stating that the Chrysler was hidden in a cave in West Virginia. He further stated that Yokum said nothing about destroying Forms 122 and 97 although they were all inter-related and that all Forms 122, 97 and 1149 were regular.

Collins, an employee of the West Virginia Department of Motor Vehicles, testified that according to his records the title to the 1962 Chrysler was transferred to Dallas Covey by Beverly Auto Sales and that he had no other records pertaining to the Chrysler.

The Defendant, Yokum, on direct examination detailed the procedures by which he obtained possession of the 1962

Chrysler and the proper execution of the Forms 122 and 97. He denied making the statement to Fairfax wherein he was supposed to have said that he had the vehicle hidden in a cave in West Virginia and explained that the alleged destruction of Form 1149 would in no manner conceal the transaction relating to the transfer of the motor vehicle because the Forms 120, 122 and 97 would be available in the records of the numerous other agencies that participated in the transfer. Yokum stated that the Chrysler car was picked up by him after first being offered to him by Fairfax and that before taking the vehicle he contacted Col. Nass and verified with him the fact that the vehicle could be of some use to him. According to Yokum the proper title documents were issued to him conveying this vehicle to the State Road Commission of West Virginia prior to his removal of the same from Fort Belvoir; that he took this vehicle to Alexandria, Virginia, and traded the same to Col. Nass for a used Cadillac that was to be kept in the Washington area for Yokum's use in screening and obtaining surplus property on behalf of the State Road Commission of West Virginia, Yokum having full authority to trade or exchange the surplus and excess property that he picked up for the State Road Commission as he saw fit, when such trades would work to the benefit of the State Road Commission of West Virginia. He stated that the Chrysler car was left in the lot belonging to Col. Nass and the Civil Air Patrol and title was transferred to Nass; that after the title had been transferred Nass had the vehicle brought to Beverly, West Virginia, for repairs, and that while the car was there Minter Rohrbaugh requested Yokum to contact Col. Nass to determine if this vehicle, as well as a Ford pickup truck which also belonged to Nass were for sale. Yokum contacted Nass, determined the purchase price of the two vehicles and they were sold to Rohrbaugh. The

check in payment of the same was delivered to Yokum and the title to the vehicles assigned to Rohrbaugh from Col. Nass. Yokum then at the request of Col. Nass cashed the check in payment for these vehicles and delivered the money to Nass. The testimony regarding the sale of the 1962 Chrysler vehicle and the pickup truck is borne out by the testimony of the Government's witness, Minter Rohrbaugh.

Count IV

This Court alleges that Woodrow Yokum unlawfully transported from the United States Naval Supply Depot, Mechanicsburg, Pennsylvaina, property of the United States consisting of 1,000 pairs of binoculars and that they had been obtained from the United States Naval Supply Depot by fraud.

The Government introduced Orum Yokum, uncle of Woodrow Yokum, who stated that two trailers were moved in on his farm in 1966 by State Road equipment; that the trailers were easily visible from the public highway and the smaller trailer was later moved by State Road equipment and State Road Employees but the larger one was left at his farm.

Harold Stevens, an FBI agent, testified as to serving the search warrant on Orum Yokum and helping to inventory the contents taken from the larger trailer. At this time the Defendant renewed his motion to suppress the evidence seized on this search warrant.

Edward Watkins, FBI agent, then testified as to his visit to the Yokum farm on January 19, 1967, and that he had received permission from Mrs. Yokum to inspect the trailer and that he observed it had a United States Navy serial number on it. Watkins testified that he did not know what was in the trailer prior to the issuance of the search war-

rant and did not know whether there was any United States Government property in it or not.

Connolly, an FBI agent, was called and stated that he was there when the search warrant was served and he too did not know what was inside the trailer.

Mrs. Georgia Yokum was called by the Defendant, on the search warrant issue, she being the wife of Orum Yokum, and stated that this trailer along with another one was brought on the property by State Road equipment and by State Road Employees, and that the FBI agent, Watkins, had come on their property and examined the trailer without her consent, but after examination told her that he thought there was stolen property in the trailer but he was never given permission to go on their property and that this trailer could easily be seen from the public road.

Watkins was later recalled and re-examined and the Defendant renewed his motion to suppress the evidence, which the Court overruled.

Stevens, an FBI agent, testified that there were 976 binoculars in the trailer consisting of three makes, i.e., Bausch and Lomb, Anchor and Hayworth.

Bendik, an employee at the U.S. Naval Defense Depot at Mechanicsburg; Pennsylvania, was called by the government. He was in charge of the control documents covering surplus property and was in charge of property disposal. He stated that they received a standard Form 122 from GSA authorizing them to ship to the State Road Commission of West Virginia 1,000 binoculars, Bausch and Lomb, etc., and that they were shipped to the State Road Commission with GSA approval. That it was a regular transfer, followed the normal procedure and that his shipping documents showed that they were shipped to the State Road Commission of West Virginia and that previous to the time they were picked up they had notified the State Road Commission of their release.

Morris Mark, GSA employee, stated that he had called GSA, Region 2, in New York for Yokum to see if the binoculars were available and to freeze them for the State Road Commission of West Virginia. He prepared and signed a standard Form 122 at Yokum's request; that he knew that Yokum was a State Road Commission representative; that this transfer was regular and met all requirements of GSA.

Eppinger, from the U.S. Naval Defense Supply Depot at Mechanicsburg, was called. He was the warehouse General Foreman and brought the records showing the packing slips for the binoculars for which the serial numbers were recorded and stated that they had a great many of these binoculars as excess property at Mechanicsburg.

Dallas Henke, U.S. Bureau of Public Roads, stated that the Form 122 was not made up in their office in Hagerstown; that they did not have the title of highway supervisor for any of their employees. He stated further that the binoculars were not under the control of the Bureau of Public Roads and that GSA had the right to approve Form 122 to release them to the State Road Commission.

George Bailey, State Road Commission employee, said that these binoculars had never been received to his knowledge by the State Road Commission in Buckhannon, West Virginia.

Battes, an employee at the U.S. Naval Defense Depot at Mechanicsburg, stated that they had had over 50,000 pairs of binoculars, that had been shipped to them in 1957 and 1958 and that they had been authorized in 1964 for disposal by them and were obsolete.

Weikert, who worked at the U.S. Naval Defense Supply Depot in Mechanicsburg, stated that the 1,000 binoculars were released to the State Road Commission of West Virginia and that they were regularly and properly released

and that this release was in their normal course of procedure.

Yokum testified that these binoculars were called to his attention by Morris Mark and by Col. Nass at the Washington GSA office. That Morris Mark called Region 2, New York, and froze these binoculars and later made a Form 122, signed it in the usual manner and consigned these binoculars to the State Road Commission of West Virginia. Col. Nass had told Yokum that if he got the 1,000 binoculars, which he need for CAP, that he would trade him road construction equipment for them. After the Form 122 was made out transferring these binoculars to the State Road Commission, Nass made arrangements to pick them up and further stated that Mark called Mechanicsburg and told them to notify Col. Nass when the equipment was ready for release. Yokum testified that Nass made the arrangements for the pickup and brought them from Mechanicsburg to his yard, in Alexandria, Virginia, which was the CAP's yard for the Washington area.

The following year in the fall of 1966, Yokum testified he called Nass and told him that he wanted to pick up the 1,000 pairs of binoculars because he had information that he was being checked on; that he wanted to have any property that was charged to him in his possession. Nass had the binoculars loaded on a stake truck in Alexandria, Virginia, and Yokum had one of the State Road Commission's drivers drive this stake truck to Beverly and load them into a trailer van that belonged to Col. Nass, which trailer van at that time, was located near Beverly. He stated that at the time he transferred the binoculars from the truck to the trailer van that there were by actual count 1,010 pairs and that later he moved this trailer van to the Orum Yokum farm because he was afraid someone might

break into it even though the trailer van was locked. The stake truck that he got from Nass was subsequently delivered to the State Road Commission in Buckhannon, West Virginia. In addition to the stake truck, he also obtained from CAP through Col. Nass two TD18 International Bulldozers and a crane truck which were also delivered to State Road Commission at Buckhannon.

Counts V, VI & VII

Counts V, VI and VII are interrelated in the testimony. Count V pertains to a 1962 Chevrolet Corvair that Yokum is alleged to have transported as a stolen vehicle. Count VI alleges that he transported a stolen vehicle which was a 1963 Pontiac and Count VII that he transported a stolen vehicle which was a 1962 Pontiac Bonneville and that these were all transferred from the District of Columbia to Randolph County, West Virginia.

The Government introduced William Lemck, who was Assistant Counsel of the Regional Bureau of Narcotics and Dangerous Drugs, and he prepared Forms 120 describing the 1962 Chevrolet, the 1962 Pontiac and the 1963 Pontiac and sent them to GSA, Region 3. These vehicles had all been seized by the Bureau of Narcotics. He later received shipping orders from GSA, on Forms 122, showing that the ordering agency was United States Bureau of Roads, Post Office Box 410, Buckhannon, and was signed by Woodrow Yokum as Highway Supervisor, but the cars were all consigned to the State Road Commission of West Virginia.

Morrissey, the agent in charge of the Washington Office, U.S. Bureau of Narcotics, testified that after he had been alerted by Mr. Lemck that Yokum was coming over to his office to pick up the vehicles that he prepared receipts authorizing the release from United States Government to the

State Commission of West Virginia, which receipts were taken to Kalarama Garage where these cars were stored and picked up. He stated that these receipts were prepared in this office and were all signed by Yokum. The Forms 122 approving the transfer were regular and it was a normal standard procedure.

Morris Mark, GSA employee, testified that he had approved Forms 122 for the release of the 1962 Chevrolet, the 1962 Pontiac and the 1963 Pontiac and the consignee was the State Road Commission of West Virginia, that it was in the regular course of business and the transfers were regular and that he had the authority to approve them for GSA.

Dallas Henke, Bureau of Public Roads, stated that they had no record in the Hagerstown office of the transfer of the 1962 Chevrolet, the 1962 Pontiac or the 1963 Pontiac. He further stated that property was not owned by the Bureau of Public Roads or in its possession. He was examined as to whether or not the United States Bureau of Public Roads had an office in Charleston, West Virginia, and whether they had ever communicated with the State Road Commission in 1964, 1965 or 1966 about transfer forms 122 or the transfer procedure of property going to the State Road Commission. He further stated that a new procedure had very recently been put in effect wherein GSA informed the United States Bureau of Public Roads as to any equipment released to the State Road Commission or any other state agency.

George Bailey, State Road employee, testified that the State Road Commission had no record of the receipt of the 1962 Chevrolet, the 1962 Pontiac or the 1963 Pontiac.

Collins, an employee of the Department of Motor Vehicles of West Virginia, showed that the title to the Corvair was issued to John Hill of Beverly and that the 1962 and 1963 Pontiacs were titled to Woodrow Yokum but he had

no records of the source of title for any of these vehicles at the time he testified.

Trusky, a garage owner in Philippi, West Virginia, testified that Delaine Miller brought the 1963 Pontiac to his garage, that the transmission was out of the vehicle and it is still there. He stated that the officers checked it, which was substantiated by FBA Agent Watkins. At this point Delaine Miller was questioned in detail about his intent to take the Fifth Amendment if questioned by the Government as a witness.

Bertsel Miller, father of Delaine Miller, testified that his son asked him to try out the 1963 Pontiac and that he told him the transmission was about to fall out and that he took it to Trusky's garage. That his son worked for the Department of Institutions of the State of West Virginia. The 1962 Pontiac had been towed into a nearby garage owned by a neighbor, a Mr. Paul, and had been towed there by his son, Delaine Miller.

Rohrbaugh of Beverly Auto Sales was recalled for the Government and stated that he prepared Government Exhibit 41, being an Application for Title, for the 1962 Chevrolet, at John Hill's request.

John Hill of Beverly stated that he and Gum and Eldridge who were State Road Employees, had driven the 1962 Chevrolet and two Pontiacs to the Carter House Motel Lot in Alexandria, Virginia, at Yokum's request and left them. That later he picked up the 1962 Chevrolet for Col. Nass and drove it to Elkins and was told by Col. Nass to leave it in Elkins at the State Road Commission office for repairs. That Col. Nass was a colonel in the Air Force Reserve and picked up surplus and excess property for the CAP. He also testified that he first started going with Yokum at Yokum's wife's request because of a wreck that Yokum had had leaving him in poor physical condition. He also stated

that he had known Lt. Col. Nass for several years. He got the 1962 Chevrolet at the motel lot and drove it to Elkins. He stated that he was the owner of the Chevrolet for a short time and that Nass had mailed him a form to get a West Virginia title for it and that he had paid nothing for the car. He testified further that he took the Chevrolet back to Alexandria at Nass' request and delivered it to the Charter House Motel Lot and that he called a number which had been given to him by Nass and told the people where the car was located. Later two people came to the motel lot and he gave them the title and the keys. All of this action concerning the 1962 Chevrolet being at Nass' direction. He further stated that Nass had been killed in an airplane crash in 1967. Hill came back to Elkins the next day with Woodrow Yokum after delivering the 1962 Chevrolet. He further stated that he drove the two Pontiacs from Alexandria, Virginia, to his farm in Beverly and gave the keys for them to Yokum.

With regard to these three counts, testimony on behalf of the Defendant was offiered by Delaine Miller who said that he was in charge of the acquisition of surplus and excess property for the West Virginia Department of Institutions; that he had met in the Washington area with Mr. Mark, with Institutioned Commissioner, Chauncey Browning, Jr., with Woodrow Yokum, plus various representatives of the General Services Administration. He had been advised by GSA officials that other States had been obtaining surplus and excess property for their public institutions other than their State Road Commissions and that the need for such property by the Department of Institutions of West Virginia was critical. He was further advised by GSA that such material could be picked up through the State Road Commission and by it transferred to the Department of Institutions of West Virginia, and that this

procedure would be approved by General Services Administration. That thereafter considerable surplus and excess property was picked up by the State Road Commission and traded among State agencies, including the Department of Institutions. That the two Pontiacs involved were turned over to Miller for the Department of Institutions by Yokum; that he picked them up in the Elkins area; that they had been properly released by the General Services Administration; that both were in a bad state of repair and that he had taken them to Philippi, West Virginia, for repairs pending a determination as to the public institution to which these cars would be assigned.

The Defendant, Yokum, testified that the Chevrolet and both Pontiac vehicles were picked up after obtaining proper releases from the Bureau of Narcotics, plus the GSA approval of the transfers of these three vehicles to the West Virginia State Road Commission which was given prior to the vehicles being taken into his possession. That the Chevrolet Corvair was delivered to Col. Nass at the CAP Lot in Alexandria, Virginia, and that he received in return for the use of the State Road Commission a stake body truck which was later delivered to the Buckhannon yard of the State Road Commission of West Virginia. Yokum stated that this trade with Nass followed the usual practice of trading for material that was a benefit to the State Road Commission; that after the Chevrolet Corvair was delivered to the lot in Alexandria, Virginia, he had no further connection with it or had no knowledge of its ultimate disposition.

With relation to the two Pontiacs which were transported to Beverly, West Virginia, and from there delivered to Delaine Miller, as the representative of the Department of Institutions, the titles to these vehicles were retained by Yokum awaiting the repair of the vehicles and their de-

livery to the particular public institution designated by the Department.

Chauncey Browning, who at the time was Commissioner of Institutions, corroborated the testimony of Yokum with regard to Yokum and Miller meeting with him and officials of GSA in Washington, D. C., as well as with United States Senator, Robert Byrd, on the subject of obtaining surplus or excess Government property for use of various institutions located in the State of West Virginia. He testified that he met with GSA officials; that Yokum had obtained large amounts of property for his particular branch of the State Government that was turned over to that branch through their property procurement department headed by Delaine Miller.

Count IX

Count IX alleges that Yokum sold a 1951 Ward La France fire truck belonging to the United States which was the property of the United States and which had been stolen from them. The Government introduced Daniels, a mill foreman who had been Assistant Fire Chief of the Tygarts Valley Fire Department in 1964 and was now the Chief of the Beverly Fire Department. He had known Yokum for 25 years and had asked Yokum to help them acquire another fire truck, and that Yokum had gotten them a fire truck in the year 1960. He stated that Yokum told him that he would have to check with Col. Nass about acquiring this Ward La France fire truck. He further stated that the fire department borrowed $5,000.00 from the Citizens National Bank of Elkins and that Yokum was one of the consigners of the note along with other members of the Fire Department. He further stated that Yokum had told him he would have to check with the owner of the fire truck before he could find out about the price and whether

it could be sold. This truck was originally purchased by the Tygarts Valley Fire Department and later transferred to the Beverly Fire Department.

Nitz stated that in the minutes of the meeting of July 29, 1964, the Tygarts Valley Fire Department decided to buy a fire truck and get a loan from the Citizens National Bank for $5,000.00; that they did buy a Ward La France fire truck and that they gave the check for $5,000.00 in payment of the same to Yokum on August 14, 1964, although they had had the truck for some time before that.

Vanscoy, Executive Vice President of the Citizens National Bank, identified a Cashier's check issued on August 14, 1964, and cashed for cash on September 9, 1964, at the Davis Trust Company in Elkins, as the proceeds of the $5,000.00 loan.

Collins, an employee of the West Virginia Department of Motor Vehicles, testified that a title for a 1957 Ward La France fire truck was issued first to the Tygarts Valley Fire Department and later transferred to the Beverly Fire Department; that the West Virginia title was issued in a Form 97 release of title which was received from the CAP, 100 East Cliff Street, Alexandria, Virginia, and that this Form 97 was signed by E. D. Nass, Jr., Lt. Col., on May 25, 1964, and that the Form 97 was a certificate of release from the United States to the CAP. The title was for a 1957 Ward La France and not a 1951 Ward La France fire truck.

Daily, an employee of Fairchild Aircraft, Hagerstown, stated that the Government loaned them equipment and when it was no longer needed they would notify the United States Government of this and the Government would retake possession of it, that they did notify the United States Government they no longer needed the 1951 Ward La France and that on a Form 1149, which is a requisition

and shipping document, that this 1951 Ward La France was shipped and transferred to CAP, 501 Seventh Street, Washington, D. C., Attention Col. Woody Yokum, on January 1, 1964.

Worden Fairfax, Property Disposal Officer, Fort Belvoir, testified that his records reflect the transfer of the Ward La Francee fire truck to the CAP and that the transfer was in proper form and in compliance with their regulations. His records further reflect that the vehicle was transferred back to Fort Belvoir on the same day and that though he never saw the vehicle he assumes this to be merely a paper transaction; that sometime thereafter this 1951 Ward La France vehicle was reported as scrap and was sold in a consignment of 250,000 pounds of scrap metal to Irving Miller, a local salvage dealer, and that the Government received $1,500.00 for this quantity of scrap metal.

The Defendant, Yokum, testified that he obtained a 1957 Ward La France fire engine from Col. Nass, Property officer of the Third Region of CAP, Washington Wing; that this vehicle was transported to Beverly, West Virginia, and turned over to the Tygarts Valley Fire Department for its approval; that the vehicle was altered by the Fire Department to meet the requirements of the West Virginia State Fire Marshal's Office and that thereafter at the request of the Tygarts Valley Fire Department he contacted Col. Nass, who advised him that the CAP would sell this vehicle for the price of $5,000.00. Yokum testified that he, being a member of the Tygarts Valley Fire Department, endorsed the note with other members of the Fire Department as security for the loan with Citizens National Bank, the proceeds of which were used to pay CAP for the truck. He stated that he offered Nass a Cashier's check; that Nass refused the same and required him to get the check cashed and deliver the money to him. The vehicle that was sold

in this instance being a 1957 Ward La France fire truck and that this fire truck is now held by the Beverly Fire Department, who obtained the transfer from Tygarts Valley Fire Department, and is a 1957 Ward La France fire engine.

Count X

Count X alleges that Yokum transported a stolen vehicle consisting of a 1953 FWD fire truck from Norfolk, Virginia, to Randolph County, West Virginia, knowing the vehicle to be stolen.

Daniels, Fire Chief for Beverly Fire Department, stated that Yokum told the fire department that if they fixed up this FWD fire truck they could use it and he would loan it to them but he could not sell it to the fire department.

Herman Barnes, Disposal Officer, United States Navy Supply Center, Norfolk, Virginia, testified that Form 122 for the FWD fire truck carrying Serial No. 400881, was properly executed and that when the truck was picked up from his yard Form DD1148, being a Navy form prepared by his office, transferred this fire truck to the State Road Commission of the State of West Virginia. He stated that the actual pick-up of the truck was at Cheatam Annex, Williamsburg, Virginia, and that the truck was in bad state of repair. The estimated cost of repair of this vehicle was $4,500.00. This witness further testified that no charge was made for this vehicle and that the appropriate release document was received from General Services Administration and was approved on June 22, 1966, seven days prior to the date the truck was turned over to the State Road Commission of West Virginia.

Morris Mark of General Services Administration testified that the documents transferring this equipment were in order; that no charge was made for this item and that

the vehicle was consigned to the State Road Commission, Equipment Division, Buckhannon, West Virginia.

Mr. Henke of the Bureau of Public Roads testified that the records in his office did not reflect that the United States Bureau of Public Roads at Hagerstown, Maryland, was the ordering agency for this transfer and that they had no records regarding the transfer of this particular truck.

The Defendant Yokum testified that the original acquisition price of this vehicle was $7,768.00; that the Form 120 shows its physical condition to be R-4, which is the lowest classification next to scrap; that the Government's estimated cost of repairing the vehicle was $4,500.00; that it had a speedometer reading of 10,243 miles and that it had been requested by the Virginia Division of Forestry according to a notation appearing on the Form 122. Yokum said that since he had inquired about the truck prior to the request by the Virginia Department of Forestry, the General Services Administration officials executed at his request a standard Form 122 releasing the property to the State Road Commission of West Virginia; that he picked up the truck and delivered it to Beverly, where it is now in the garage of the Beverly Fire Department upon loan to them, the same being property of the State Road Commission of West Virginia. He further stated that it was customary for the State Road Commission to pick up fire fighting equipment for municipalities and other governmental units in the State of West Virginia; that this practice had been followed on prior occasions and had been approved by both State and Federal institutions involved in such transfers.

Count XI

This Count charges Yokum with transporting a 1958 Chrysler, Serial No. LY1-9744, from Alexandria, Virginia,

to Philippi, West Virginia, knowing it to be a stolen vehicle.

The Government introduced John Hall, Disposal Officer at Cameron Station, which is located in Alexandria, Virginia. He had known Yokum for approximately four years as a West Virginia State Highway Supervisor. Hull made out the standard Form 122 for the 1958 Chrysler Serial No. LY1-9744, showing the ordering agency as United States Bureau of Public Roads, Post Office Box 410, Buckhannon, West Virginia, and the same was signed by Yokum, Highway Supervisor. The warehouse delivery slip was received on October 4, 1965. He stated the Form 122 was prepared in his office and that he did this for many people and had for years; that the GSA would approximately once a month sign all of the Forms 122 that his office had issued. He stated that the control of this property was in the Army and it was turned over before GSA had approved it; that this was standard procedure and it later had been signed by GSA approving officer; that he had been told that he could release the property to the State of West Virginia and did not have to go to the GSA for approval.

So far as Hall and his office were concerned the United States Bureau of Public Roads and the State Road Commission were one and the same; that he didn't remember whether he gave Yokum a Form 97 but it was normal to give one to anyone who got a motor vehicle; that his agency had the authority to release excess property without charge.

The Court on pages 618 and 619 of the record made remarks to the jury which were prejudicial about this witness. Later the Court indicated to defense counsel out of the hearing of the jury that Hall had not testified the way the Government thought he should and implied that the Government should indict him for perjury. Hall stated that he knew that this equipment was going to the State Road Commission and that he didn't know anything about the

Federal highway regulations and had been following this same procedure for many years.

Henke of the U.S. Bureau of Public Roads was called and stated that the Form 122 for the 1958 Chrysler did not go through his Hagerstown office and that he was not familiar with Cameron Station or how they transferred property. He also stated that the U.S. Bureau of Public Roads had its district headquarters in Charleston, West Virginia, had daily contact with the State Road Commission, was connected with the radio network of the State Road Commission and even had a base radio station in Berkeley Springs, West Virginia, which was located reasonably close to Hagerstown, Maryland. He also stated that Yokum had a radio in his automobile on this State Road Commission network.

Collins, employee of the Department of Motor Vehicles of West Virginia, stated that the title for the 1958 Chrysler Serial No. 912568022 was issued to Chauncey Browning, Jr., on transfer from Delaine Miller of Philippi. This serial number did not correspond to Serial No. LY1-9744. No source of title for Delaine Miller to this vehicle was located in his office.

Thompson, an FBI agent, talked with Browning and received his permission to examine the 1958 Chrysler and the serial number on it was LY1-9744.

Chauncey Browning testified that this motor vehicle had been given to him by Delaine Miller, who was the Property Acquisition Officer for the West Virginia Department of Institutions; that the vehicle was delivered to him in Charleston, West Virginia, by Miller and that he had no information as to how the vehicle had come into Miller's possession. Delaine Miller testified that he acquired the Chrysler sedan from Lt. Col. Nass at the CAP lot in Alexandria, Virginia, and drove it to West Virginia; that the

vehicle was in a very poor state of repair and that Nass had turned it over to Miller at no charge for his use as Property Acquisition Officer for the Department of Institutions.

Yokum testified that this Chrysler automobile was first called to his attention by either John Hall or Carl Black, who were Property Disposal Officers at Cameron Station; that at the time he knew that Nass and Civil Air Patrol had three or four other Chrysler cars similar to this one on their lot at Alexandria, Virginia, and with this in mind, he obtained a Form 122 for the same, took the vehicle to the CAP yard in Alexandria and turned it over to CAP, leaving the vehicle in Alexandria. In exchange for this vehicle, Yokum received for the State Road Commission a pickup truck that he later delivered to the equipment yard of the State Road Commission at Buckhannon, West Virginia. After leaving the Chrysler in Alexandria, he had no further contact with the same and did not know of its whereabouts.

It is apparent from both the government's and the Defendant's testimony that was offered that the government's contention in this case is based on what they allege is the manner in which Forms 122 were issued, with the exception of Count 3, which they admit was a proper Form 122 The testimony produced throughout the trial clearly shows that Forms 122 had been for many years issued by GSA showing the ordering agency as United States Bureau of Public Roads, Post Office Box 410, Buckhannon, West Virginia, with the consignee as the State Road Commission. Numerous Forms 122 were produced at the trial by the Defendant to show that Evans, the Chief of Utilization of GSA, and many other utilization officers of GSA signed these forms and all stated that it was normal and regular and in the usual course of their business.

Yokum testified that these Forms 122 were prepared at GSA offices; no one in the course of the trial disputed this statement except to say that they themselves did not prepare them even though they did admit that these blank forms were available in their office. The evidence clearly reflects that all of the officials in GSA knew, and the various property disposal officers knew that Yokum was a State Road employee who was charged with getting surplus and excess property and all of the property acquired by him was consigned to the State Road Commission. No witness testifying for the government indicated that he was mislead by Yokum or the manner in which the Forms 122 were prepared. That each of them when asked testified that they knew that Woodrow Yokum represented the State Road Commission of the State of West Virginia and that the equipment that he would obtain upon the Form No. 122 was consigned to the State Road Commission of West Virginia. In addition, Form 97, which was issued for these vehicles was a complete release of the vehicles from the United States Government to the consignee as reflected by the statement contained on the back portion of each Form 97.

When the Defendant called Sgt. Burner of the West Virginia State Police, who had made a thorough investigation of the Yokum matter, he said he could find no violation of any law or that Yokum had not accounted for all State property. The same was true of Roy Coen, who had made an investigation of this situation on behalf of the State Road Commission. In fact, it was shown that the State Road Commission had received 716 pieces of equipment from the United States Government, some 75 to 80 pieces of equipment of which they had no record and they had not made any payment for this extra equipment.

The testimony of Mrs. Graziana, who was in charge of the records at the Equipment Division of the State Road Commission at Buckhannon, was to the effect that Yokum had consistently requested that all surplus property he brought in be inventoried and placed of record as soon as possible. Both Eldridge and Gum, State Road employees, testified that frequently items of surplus property were lost and not placed on the inventory record for as much as a year at a time at the Equipment Divisions yard, for example, a lowboy and two truck beds.

Col. Gobbell, Wing Commander of West Virginia CAP, testified that Yokum had been the procurement officer for the West Virginia Wing and had always accounted for all surplus property obtained by him. He further stated that a Wing Commander of the CAP had the right to sell or exchange property, surplus or excess, under rules and regulations which procedure Yokum stated that he assumed Nass had followed in the exchange and sale of property with him.

Yokum offered numerous character witnesses who testified to his good reputation, even after this indictment had been returned and he had been tried in the newspapers throughout the State. Throughout the entire proceedings the Government made a continual attempt to harrass its own witnesses by bringing their supervisors into the Court room to listen to the testimony of the government employees, and an FBI agent, Crowder, who was investigating Yokum on a matter pending in another jurisdiction, was present in the court room during a portion of the trial, and at the time they were to call Delaine Miller as a government witness, the United States Attorney asked that the Court instruct him as to his rights under the Fifth Amendment, which he had previously taken at a trial in Norfolk, Virginia, at the direction of his counsel, when they were

not able to be present and were not familiar with the issues involved other than that they dealt with surplus property.

Immediately after the witness, Hall, testified the Government refused to excuse him and discussed with the Court in the presence of defense counsel the possibility of indicting Hall for perjury.

In addition to all of this the Court, although requested to do so by defendant's counsel, never at any time admonished the jury not to read the newspapers or listen to radio or television concerning coverage of this trial. The Court's rulings made in the absence of the jury were reported in all news media, including the statement by the Court that this case involved the commission of a sophisticated type of crime, which phrase was later used by the District Attorney in his closing argument to the jury and was discussed in the Court's charge.

Prior to trial the defense timely made a motion under Rule 16c for the production of all papers, records and documents that the Government intended to use at trial. This request was complied with substantially by the Government, however, with relation to a letter allegedly written by Yokum and addressed to Elmer West, his supervisor with the State Road Commission, which letter was dated October 17, 1966, this letter was not shown to the defense but was first brought to light when it was presented to the Defendant while on cross-examination on May 28, 1968. The defendant was cross-examined upon this letter over objection of the defense and on May 29, this letter, which consisted of a photographic copy of an unsigned copy of a purported letter, was admitted in evidence by the Court over objection of the Defendant, for the sole purpose of credibility. Never at any time was the original of this letter produced or its absence explained. During the course of

the argument of the case to the jury the letter was referred to and discussed on three separate occasions by the United States Attorney in relation to material facts outside of the question of credibility. The witness, West, to whom the letter was addressed, did not know where the original was or whether he had ever received it or whether Yokum had ever sent or signed such a letter.

REASONS FOR GRANTING THE WRIT

1. The Motion To Suppress The Search Warrant Should Have Been Sustained.

The motion to suppress relating to Count 4 should have been sustained by the District Court because it is clear from the testimony of the Agent, Watkins, adduced at the trial that he did not know when he signed the search warrant that there was any Government property that was contained in the trailer. In addition the search was of general exploratory nature and was not made incident to an arrest. The property seized, the binoculars, were not particularly described in the search warrant. The Government and the trial Judge relied heavily on *U.S.* v. *Rabinowitz,* 70 S. Ct. 430, 339 U.S. 56, 94 L. Ed. 653, *Harris* v. *U.S.* 10th Circuit, 151 Fed 2d 837, which was specifically overruled in the case of *Chimel* v. *State of California,* 23 L. Ed. 2d 685, 89 S. Ct. ....., which was decided on June 23, 1969. The evidence of Watkins was insufficient and not based on facts within the knowledge of the affiant and the search was of a general exploratory one.

Trupiano v. *U.S.,* 1948, 68 S.Ct. 1299, 224 U.S. 699, 92 L.Ed. 1663.

U.S. v. *Lefkowitz,* 1932, 52 S.Ct. 420, 275 U.S. 452, 76 L.Ed. 877, 82 A.L.R. 755.

Go-Bart Importing Co. v. *U.S.* 1931, 51 S.Ct. 153, 282 U.S. 344, 75 L.Ed. 374.

Gouled v. *U.S.*, 1921, 41 S.Ct. 260, 255 U.S. 298, 65 L.Ed. 647.
Weeks v. *U.S.*, 1914, 34 S.Ct. 341, 232 U.S. 383, 58 L.Ed. 652.
Boyd v. *U.S.*, 1886, 6 S.Ct. 524, 116 U.S. 616, 29 L.Ed. 746.
U.S. v. *Rabinowitz*, N. Y. 1950, 70 S.Ct. 430, 339 U.S. 56, 94 L.Ed. 653, Cert. denied 70 S.Ct. 188, 338 U.S. 886, 94 L.Ed. 544.
Lowrey v. *U.S.*, C.C.A. Ark. 1947, 161 Fed. 2d 30, Cert. denied, 67 S.Ct. 36, 331 U.S. 849, 91 L.Ed. 369.
U.S. v. *Kelley*, D.C.N.C. 1921, 277 F. 485.
Atlanta Enterprises v. *Crawford*, D. C. Ga. 1927, 22 F.2d 834.
Marron v. *U.S.*, Cal. 1927, 48 S.Ct. 74, 275 U.S. 192, 72 L.Ed. 231.
U.S. v. *Doe*, D. C. Tenn. 19 F.R.D. 1.
"Federal Practice and Procedure," Barron & Holtzoff, Vol. 4, Sec. 2402.
Chimel v. *State of Calif.*, 23 L. Ed. 2d 685, 89 S.Ct.

2. Adverse Publicity Given Defendant Prior To And During Trial Deprived Him Of A Hearing Before An Impartial Jury.

The Defendant, Yokum, was arrested in February of 1967 and at that time the newspapers, copies of which have been filed in this case, reflected that the Government seized large quantities of property belonging to Yokum and said that the same had been received by him from illegal activities on his part as an employee of the State Road Commission. From the date of his arrest to his indictment and through the trial to his sentencing the press gave him wide publicity, as well as did other news media, all of which was unfavorable to him and in all news releases where any mention was made of Yokum's name there was inserted a statement to the effect that he was charged in Federal Court, both here and in other jurisdictions, with obtaining

in excess of $300,000.00 worth of Government property. Yokum was not charged in the indictment nor did the evidence show that he had received this amount of property, and the trial Court although repeatedly requested to do so by the defense did not admonish the jury not to read the local papers or listen to local news reports.

PUBLICITY ADVERSE TO THE DEFENDANT

A. Where the jurors had access to and had read prejudicial articles in local newspapers commenting upon the trial and they had not been specifically admonished to disregard such publicity the Court should grant a new trial to the defendant.

People v. *Murawski,* 394 Illinois 236, 68 N.E.(2d) 272.
State v. *Barille,* 111 W.Va. 567 (syl.1).
31 ALR (2d) 417.
Sheppard v. *Maxwell,* 384 N.S. 333.
In Re Murchinson, 349 U.S. 133.
White v. *Maryland,* 373 U.S. 59.
Gideon v. *Wainwright,* 372 U.S. 335.
Offutt v. *U.S.,* 348 U.S. 11.

B. Where the actual effect of publicity is such that a conviction is inherent as result of it the Court should grant Defendant a new trial.

Rideau v. *Louisiana,* 373 U.S. 723.
Turner v. *Louisiana,* 379 U.S. 466.
Estes v. *Texas,* 381 U.S. 532.

3. The District Court Erred In Failing To Grant The Defendant's Motion For Judgment Of Acquittal On All Counts Against Him Which Were Not Proven By The Government.

The evidence clearly shows that the procedure used by Yokum was that outlined to him by General Services Ad-

ministration, it being the Government agency that had title to the property and also the holding agency who released the property through its employees who testified and stated that Yokum followed a correct procedure and it was regular. In addition this procedure was the one outlined by General Services Administration and the majority of the documents were prepared in the office of the General Services Administration by their employees. At no time were any regulations or statutes introduced to the effect that it was necessary to go through the Bureau of Public Roads in order to get release of this property. The Bureau of Public Roads did not have title to it and the only evidence that the Government introduced was that of the witness Henke. Yokum was known to be an employee of the State Road and was a highway supervisor for it. The address given, Post Office Box 410, Buckhannon, West, Virginia, was known by all parties to be the post office address of the Equipment Division of the State Road Commission of West Virginia. In addition it was shown that the State Road Commission received some seventy-five articles or more that it did not have any evidence of title to. The question of the source of West Virginia title had no bearing on the guilt or innocence of Yokum and it was not proper to be introduced in this trial. One of the items, the 1951 Ward La France fire truck covered under Count 10, was shown by the Government's own evidence to have been sold for scrap and the Government received pay for this item, yet the Government contends that this item was stolen by Yokum and sold. The evidence further shows that any money received by Yokum was turned over to Colonel Nass, as reflected by the testimony of Rohrbough pertaining to the title of the Chrysler car charged in Counts 1 and 2 and also as pertaining to the fire truck, which was a 1951 Ward La France fire truck. In addition, as stated by several of the

witnesses, the equipment which is charged in these various counts was of no value and no charge was made by the Federal Government for its release. To hold that Yokum by-passed proper procedure is not in accordance with the testimony offered by the Government.

EVIDENCE

1. Conviction cannot be had upon evidence which is consistent with both innocence and guilt.

Weeks v. *U.S.*, 10 C.A. 313 Fed. 2d 688.
Cert. denied, 373 U.S. 922, 83 S.Ct. 1523, 10 L.Ed. 2d 421.
U.S. v. *Martin*, 375 Fed. 2d. 456.

2. Circumstantial evidence because of its nature should be scanned with caution and great care.

State v. *Gunnoe*, 74 W.Va. 741.
State v. *Bennett*, 93 W.Va. 548, 117 S.E. 371, see Syl. No. 2.
State v. *Dudley*, 96 W.Va. 481, 123 S.E. 241.
State v. *Maley*, 151 W.Va. 593, 153 S.E.2d 827, Syl. 1 & 2.
Stubbs v. *U.S.*, 2 Fed. 2d. 468.

3. Requirement of proof and reasonable doubt.

Rule 52(b).
Screws v. *U.S.*, 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495.
Byrd v. *U.S.*, 119 U.S. App. D.C. 360, 342 F.2d 939.
Apodaca v. *U.S.*, 188 F.2d. 932.
Forte v. *U.S.* (D.C.C. of A) 94 F.2d. 236, 127 A.L.R. 1120.

Stutz v. *U.S.*, 47 Fed. (2d) 1029.
Anderson v. *U.S.*, 30 Fed. (2d) 485.

Criminal Intent

Criminal intent is a necessary element of larceny described in U.S. Criminal Code.

U.S. v. *Lamb*, (1957) 150 Fed. Supp. 310.
Findley v. *U.S.*, (1966) C.A. Colo. 362 F.2d. 921.
Halfen v. *U.S.*, (1963) C.A. Okla., 324 F.2d 52.
Morrissette v. *U.S.*, 324 U.S. 24, 72 S.Ct. 240, 96 L.Ed. 288.
Souza v. *U.S.*, 9th Cir. 304 F.2d. 274.

Willful, when used in a criminal statute, it generally means an act done with a bad purpose.

An evil motive to accomplish that which the statute condemns, becomes a constituent element of the crime.

U.S. v. *Murdock*, 290 U.S. 389.
Felton v. *U.S.*, 96 U.S. 699.
Potter v. *U.S.*, 155 U.S. 438.

Elements of Dyer Act

To convict the defendant of transportation of stolen property in interstate commerce there must be three essential elements to obtain a conviction.

(1) that the vehicle was stolen.

(2) that there was transportation in Interstate Commerce; and

(3) that such transportation was with the knowledge that the vehicle was stolen.

The government must prove each of these elements by substantial evidence from which the jury could properly find the accused guilty beyond a reasonable doubt.

U.S. v. *Martin* (1967) C.H. Tenn. 375 F.2d. 956.
Maguire v. *U.S.* (1966) C.A.N.M. 358 F.2d. 442.

Conviction for knowingly transporting a motor vehicle across a state line requires a showing of the common law crime of larceny requiring trespass or relinquish of title without the consent of owner.

Hand v. *U.S.* (1955) C.A. Colo. 227 F.2d. 794.
Tyler v. *U.S.* 323 Fed. 2d. 711.

It is incumbent upon the government to prove, among other things, that the transportation in interstate is accomplished with an unlawful and fraudulent intent.

Weeks v. *U.S.*, 10 C.A. 313, F.2d. 688.
Cert. denied, 373 A.S. 922, 83 S.Ct. 1523, 10 L.Ed. 2d. 421.

4. The Court Erred In Refusing Defendant's Request That The Jury Be Instructed Specifically Regarding The Dangers And Shortcomings Of Circumstantial Evidence And In Advising Them That Such Evidence Should Be Scanned With Caution.

In this connection the Trial Court and the Court of Appeals took the position that the case of *Holland* v. *U.S.*, 348 U.S. 121, 99 L.Ed. 150, held that such an instruction regarding circumstantial evidence was not required. Upon a review of this case it is to be noted that while the Holland case did hold that a charge on circumstantial evidence would not be required in that instance in event the Court had fully and completely instructed the jury upon the principles of reasonable doubt. In the instant case the Judge of the Trial

Court, as appears in the Appendix, did not fully and adequately instruct the jury upon the standards for reasonable doubt so as to relieve it of the necessity of making such charge upon the question of circumstantial evidence. The charge as given by the Court not only did not cover the reasonable doubt theory fully but in effect what little was said about circumstantial evidence tended to place circumstantial evidence in a much more reliable position that it is at law entitled. The basic premises in a charge of circumstantial evidence that it should be scanned with caution and must exclude every reasonable hypothesis other than that of guilt was not included within the Court's charge in this proceeding.

5. The Court's Charge Did Not Confine The Jury's Deliberation To The Elements Of A Federal Crime But Was A Charge Of Such A General Nature As To Permit Unlimited Speculation Based Upon The Inconsistencies And Inadequacies Of State Government Records And Items Which Might Constitute A Violation Of State Statutes By The Defendants And Others.

This omission from the charge was particularly damaging to the Defendant in view of the fact that the Court had admitted over Defendant's objections evidence which was irrelevant but related to possible violation of State regulations and statutes.

6. The District Court Committed Error In Permitting The Government To Introduce A Xerox Copy Of A Copy Of A Letter Which Was Unsigned And Which Was Alleged To Be A Letter From The Defendant, Yokum, To Elmer West Dated October 17, 1966, And In Permitting The United States Attorney To Use The Same As An Integral Part Of The Proof Of Guilt In His Closing Argument.

A particularly glaring error committed by the Trial Court in this case was the admission of a Xerox copy of an unsigned copy of a letter addressed to Elmer West, who was

Yokum's immediate supervisor, which letter was dated October 17, 1966, and which letter the Defendant denied ever writing or having any knowledge of. The Government did not excuse or account for the absence of the original of this letter. The letter dealt with different subjects on the first and second pages. West when questioned did not recall ever having received the original or knowing whether such a letter had ever been written. The evidence was that the United States Attorney's office had the letter at least two days prior to its introduction. It had not been shown to counsel for Yokum in compliance with Rule 16(c) and when it was admitted by the Court over the objection of the Defendant it was supposed to be only as to his credibility, however, the United States Attorney used this letter as a basic part of his presentation to show the Government's proof of the Defendant's guilt and referred to it specifically on at least three separate occasions and in no way used it as to the question of credibility of the Defendant. This letter in itself of necessity had to have a decided effect upon the jury's consideration of the guilt or innocence of the defendant because of the contents therein.

ADMISSION OF COPY OF UNAUTHENTICATED LETTER

A. The authenticity of a letter or private writing must be clearly established before it can be admitted in evidence.

29 A.J. 2d "Evidence," Sections 849 and 879, 486 to 491 incl.

Grossman v. *U.S. Slicing Machine Co.*, 365 Fed. (2d) 687 (3rd Circ.)

Adams v. *Hotel Sherman, Inc.*, 138 Fed. (2d) 524 (7th Circ.)

Prevast v. *U.S.*, 149 Fed. (2d) 747 (9th Circ.)

B. The truth of the original document must first be established and its non-production excused before a copy of the writing is admissible.

Smith et al. v. *Carrington,* 4 Cranch 63, 2 Law Ed. 550.
Cobb v. *Glenn Boom & Lumber Co.,* 57 W.Va. 49.
Campbell v. *U.S.,* 373 U.S. 487.

7. The Fourth Circuit Court's Opinion And Judgment That The District Court Did Not Err In Its Ruling Except As To Count 3 Of The Indictment And Overrulnig All Other Errors Assigned Is Not Supported By The Applicable Principles Of Law And Evidence.

Although Petitioner relies on other errors assigned to the Court of Appeals and believes such assignments are sound, Petitioner does not believe it necessary to elaborate upon the same at this time, however, if the Court desires further elaboration upon such errors Petitioner will comply forthwith.

It is substantially the Petitioner's position that the violations charged against the Defendant basically require the Government to show that at the time of the alleged offense the title to the property was in the Government. In the trial of this case it was clearly shown that as of the time any of the items of Government property were taken into possession by the Defendant or transported by him that the title to the property had already been assigned to the State Road Commission of West Virginia and was not the property of the Federal Government.

It is counsel's contention that the errors assigned with regard to the matter of publicity, the Court's ruling on the search warrants, the improper admission of the photograph of the unsigned copy of a letter, and the errors in

the Court's charge are sufficient upon which to have this case reviewed.

CONCLUSION

For the reasons assigned the Petitioner prays that the Petition for Writ of Certiorari should be granted and that the writ issue to review the opinion and judgment of the Fourth Circuit Court entered in Case No. 12,740 on October 16, 1969, as aforesaid.

Respectfully submitted,

BONN BROWN
Elkins, West Virginia

MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Petitioner

LIBRARY
UPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 14 1969
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1969

No. 845

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BONN BROWN
Elkins, West Virginia

MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Petitioner

TABLE OF CONTENTS

	App. Page
Judgment of United States Court of Appeals	1
Opinion of United States Court of Appeals	2
Motion of November 7, 1967 for Return of Property	7
Motion of November 7, 1967 for Bill of Particulars	7
Motion of November 7, 1967 for Discovery and Inspection	9
Order of Court of March 4, 1968	10
Motion of March 7, 1968 for Inspection and Discovery	12
Motion in Resistance to Government's Motion for Inspection and Discovery	12
Order of Proceedings of April 15, 1968	13
Order of Arraignment on April 18, 1968	14
Motion for Suppression of Evidence and Return of Property	15
Motion for New Trial	16
Order of Court Overruling Motion for New Trial	19
Judgment and Commitment Order	20
Government's Exhibit No. 7	22
Government's Exhibit No. 5	23
District Court's Charge to Jury	24

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 12,740

UNITED STATES OF AMERICA,

Appellee,

v.

WOODROW YOKUM,

Appellant.

Appeal from the United States District Court for the Northern District of West Virginia.

This cause came on to be heard on the record from the United States District Court for the Northern District of West Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is reversed as to Count 3 of the Indictment and affirmed as to the remaining 9 Counts thereof.

SAMUEL W. PHILLIPS
Clerk

Note: This Order has not been received by counsel or the U.S. Clerk's Office for the Northern District of West Virginia, but the contents thereof has been verified by phone.

OPINION OF THE UNITED STATES COURT OF APPEALS

CRAVEN, Circuit Judge:

Defendant, Woodrow Yokum, was convicted on 10 counts of an 11 count indictment charging him with interstate transportation of stolen motor vehicles, 18 USC 2312; unlawful sale of property stolen from the U.S.; 18 USC 641; and transportation of property obtained by fraud from the U.S., 18 USC 2314. He was sentenced to 3 years on each of 6 counts and to 4 years on each of 4 counts—the sentences to run concurrently. We reverse his conviction on count 3 and affirm on the remaining nine counts.

Yokum was Highway Supervisor for the West Virginia State Road Commission. In this capacity he obtained surplus federal property for the state road commission. The proper procedure for obtaining such property was for the West Virginia State Road Commission to ask the Bureau of Public Roads at Hagerstown, Maryland, an agency of the United States, to order the surplus equipment for the state agency. If the Bureau determined that the state agency was eligible for the surplus equipment requested, the Bureau would prepare multiple copies of Standard Form 122. One would be sent to the appropriate regional office of the General Services Administration, which shared responsibility for distribution of surplus property. Copies would also be sent to the state agency, which would then send or take Form 122 to the appropriate regional GSA office. GSA would then, after resolving priority conflicts between the state agency and any federal agency interested in acquiring the property, note its approval on the form. Having obtained endorsement from both the Bureau of Public Roads and GSA, the state agency would then take the Form 122 to the federal agency holding the surplus property. There, by another procedure not relevant here,

the property would be released to the state. At this point the state agency would, on the Form 122 sent them by the Bureau of Public Roads, add an endorsement to the effect that the requested equipment had been received and then return the form to the Bureau of Public Roads at Hagerstown, Maryland. Then the Bureau of Public Roads would bill the state agency for the equipment received. During the years 1964 through 1967 the Bureau of Public Roads received 170 requests for surplus property from the West Virginia State Road Commission; these requests were processed by it according to the procedure outlined above.

Yokum apparently discovered that there was no cross-check between GSA and the Bureau of Public Roads. By omitting the Bureau of Public Roads from the requisitioning procedure he got property and avoided having West Virginia billed for it. GSA sent no bills, as billing was the responsibility of the Bureau of Public Roads at Hagerstown, Maryland. To obtain the property involved in eight counts of the indictment, Yokum caused 122 Forms to be filled out listing the ordering agency as the "U.S. Bureau of Public Roads" at P.O. Box 410, Buckhannon, West Virginia. There is no such agency, and the address given is that of Yokum's office at the State Road Commission. In the blank provided on Form 122 for a signature indicating approval by the ordering agency Yokum signed his name listing his title as "Hiway Supervisor." The proper authority to approve such requests was the Bureau of Public Roads at Hagerstown, Maryland. Yokum was not one of its employees, and that agency had no agent with the title "Hiway Supervisor."

Yokum questions the sufficiency of the evidence to sustain his convictions. In six counts of the indictment he was charged with interstate transportation of stolen motor vehicles in violation of 18 U.S.C.A. § 2312. Considering

the evidence in the light most favorable to the government, as we must, *United States* v. *Costanzo,* 395 F.2d 441, 445 (4th Cir. 1968), we find it sufficient to sustain these convictions.

In all six of these counts the vehicles were obtained by Forms 122 bearing Yokum's signature specifying the fictitious "U.S. Bureau of Public Roads" as the ordering agency. There was evidence that the State Road Commission received none of the vehicles. The title source documents on all but one of the six were conspicuously absent from the files of the West Virginia Department of Motor Vehicles. Two of them were titled in Yokum's name, one in the name of his wife's first cousin, two in the names of his friends, and one, a fire truck, was loaned by Yokum to a fire department in his home town. We think this evidence was sufficient to establish that the vehicles were stolen and that Yokum had knowledge that they were stolen. The evidence further tended to show that all six of the vehicles were taken across state lines by Yokum or at his direction. More is not needed to sustain these convictions. *United States* v. *Costanzo, supra; Scott* v. *United States,* 255 F.2d 18 (4th Cir. 1958).

One count of the indictment charged Yokum with knowingly transporting stolen property with a value of more than $5,000 in interstate commerce in violations of 18 U.S.C.A. § 2314. The property, 1,000 pairs of binoculars, was found on a farm in West Virginia belonging to Yokum's uncle. Evidence sufficient to sustain the conviction, *Periera* v. *United States,* 347 U.S. 1, 98 L.Ed. 435, 74 S.Ct. 258 (1954), was that the binoculars were obtained by a Form 122, which Yokum caused to be executed, and which bore his signature signifying approval by the nonexistent "U.S. Bureau of Public Roads," and further that the binoculars were transported across state lines by State

Road Commission employees at Yokum's direction. The State Road Commission had no record of ever having received the binoculars, which were valued at $165 per pair.

Yokum was charged with three counts involving violations of 18 U.S.C.A. § 641. The statute proscribes (1) the sale of property (2) belonging to the United States (3) without authority (4) knowing at the time of the sale that the property belonged to the United States. Violation of the statute is made a felony if the property is valued over $100. *See Souza* v. *United States,* 304 F.2d 274 (9th Cir. 1962). Evidence sufficient to sustain the first of these three counts was that a 1962 Chrysler Imperial was obtained by Yokum via a Form 122 which designated the fictitious "U.S. Bureau of Public Roads" as the acquiring agency, and, in addition that he sold the car to a Beverly, West Virginia, used auto dealer for $600.

The evidence as to the second count (count No. 3 of the indictment), considered in the light most favorable to the government, tends to show that a 1953 International Wrecker Truck was obtained by Yokum on a legitimate Form 122, that the title was released by the government to the State Road Commission, and that the government was paid for the truck. The 122 Form did contain a discrepancy, in that it described the truck as a dump truck rather than as a wrecker. The discrepancy probably originated in Yokum's request to the Bureau of Public Roads for the truck. However, the evidence, particularly the fact that the serial numbers and the Marine Corps numbers identifying the vehicle were correctly recorded on all of the papers and forms passing between the offices of the various federal agencies, tends to show that title to the truck passed to the state and that the federal government received its due. We are not unaware that the evidence also tended to show that title to the truck somehow came to Yokum, and that he

sold the truck to a West Virginia body shop and kept the proceeds. Yokum may have cheated West Virginia. An esesential element of the offense, however, is that the property sold was the property of the United States, *see Souza* v. *United States, supra,* and that element was not established. We reverse Yokum's conviction on count 3.

Finally, Yokum was charged with the sale of a 1951 Ward La France fire truck in violation of 18 U.S.C.A. § 641. The government produced evidence consisting of various interagency form communications between the Capitol Wing of the Civil Air Patrol and the Property Disposal Officer at Ft. Belvoir, Virginia. The forms show that this truck was authorized to be stripped of its useable equipment and that the remains were sold for scrap. However, evidence was also produced showing that a Ward La France fire truck with the same serial number and the same engine number titled as a 1957 model was sold by Yokum for $5,000 to a fire department near his home. There was also evidence that the truck was shipped to the Civil Air Patrol "attention Col. Woody Yokum" by the government contractor who had reported it as surplus property. Furthermore, the United States Government Certificate of Release, issued on the fire truck the equivalent of a certificate of title, bore the same certificate number as one of ten of such certificates obtained by Yokum from the Property Disposal Officer at Ft. Belvoir, Virginia. We think there was sufficient evidence to sustain this conviction.

We have carefully considered Yokum's other contentions of error and find them to be without merit.

AFFIRMED AS TO NINE COUNTS.
REVERSED AS TO COUNT 3.

MOTION FOR RETURN OF PROPERTY

Now comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Milford L. Gibson, his counsel, and moves the Court for the entry of an Order directing the United States of America to return to the Defendant all of his property and the property of the State Road Commission of West Virginia, as well as all other property which was seized and confiscated by it in the investigation and preparation of its charges against him, with the exception of the items specified in the Counts of the Indictment now pending against him in this Court.

Defendant also moves that such Order require (A) the delivery of such property to the exact location from which it was taken; (B) that all property be returned in as good a state of repair as it was when seized; and (C) that the quantity of property so taken be strictly accounted for by the United States of America.

WOODROW YOKUM
By Counsel

/s/ BONN BROWN
Elkins, West Virginia

/s/ MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Defendant

MOTION FOR BILL OF PARTICULARS

Now comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Milford L. Gibson, his counsel and advises the Court that the Defendant and counsel are not sufficiently advised as to the nature of the charges against him, as set out Counts I to XI inclusive of the Indictment returned herein to enable him to plead to any of said Counts in the Indictment; therefore, the Defendant

moves that the United States of America be required to furnish the Defendant pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure a Bill of Particulars setting forth in detail the following:

(1.) The nature of the charge against him in each Count of the Indictment, as well as a disclosure of the identity of the items of written or printed evidence upon which said Indictment counts are based.

(2.) That it produce for copying and examination the items of written evidence involved in the proof of the facts in each of the Indictment Counts, as well as any and all written statements made by the Defendant to investigative officers and copies of investigative reports in the possession of the United States of America relating to the items charged in the Indictment.

(3.) That the prosecution produce for examination and copying the minutes or notes of the Grand Jury, including any recorded or reported evidence taken, as well as the log of witnesses who appeared before the Grand Jury at the time of the hearing upon which this Indictment was returned.

(4.) That the United States produce for photo copying and examination any and all forms or documents allegedly signed or executed by the Defendant in the performance of the acts charged in the respective Counts of the Indictment.

WOODROW YOKUM
By Counsel

/s/ BONN BROWN
Elkins, West Virginia

/s/ MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Defendant

MOTION FOR DISCOVERY AND INSPECTION

Now comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Milford L. Gibson, his counsel, and pursuant to Rule No. 16 of the Federal Rules of Criminal Procedure, before the Defendant has entered a plea to the Indictment returned against him, moves the Court for the entry of an Order directing the United States of America to produce and to permit the Defendant to inspect and copy or photograph the following documents or records pertaining to the charges against him:

(A.) Standard Form #122 "Excess Property Transfer Order" of General Services Administration relating to the transfer of 1,000 pair of binoculars as charged in Count No. IV of the Indictment.

(B.) Form #97 "Government Release Form for Motor Vehicle" relative to 1962 Chevrolet Corvair Convertible, Serial No. 20967W258726, as charged in Count No. V of Indictment.

(C.) Form #97 "Government Release Form of Motor Vehicle" relative to 1963 Pontiac four-door sedan, Serial No. 363-W-40273, as specified in Count No. VI of the Indictment.

(D.) Form #97 "Government Release Form for Motor Vehicle" relative to 1962 Pontiac Bonneville Convertible, Serial No. 862-W-10701 as mentioned in Count No. VII of the Indictment.

(E.) Form #97 "Government Release Form for Motor Vehicle" regarding 1951 Ward LaFrance Fire Truck,

Engine No. 80457 as referred to in Count No. IX of the Indictment.

WOODROW YOKUM
By Counsel

/s/ BONN BROWN
Elkins, West Virginia

/s/ MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Defendant

ORDER

This 4th day of March, 1968, comes the United States of America by John H. Kamlowsky, United States Attorney for the Northern District of West Virginia, and comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Miltord L. Gibson, his counsel. Thereupon counsel for Defendant advised the Court that in compliance with Defendant's motion for discovery and inspection of documents under Rule 16 of the Rules of Criminal Procedure the Government had voluntarily furnished all of the items requested therein except the "Government Release Form for Motor Vehicle" that were requested in Items B, C, D and E of the Defendant's motion. The United States Attorney advised that the Government had and would furnish the Form 97 for Item E, but that these forms for Items B, C and D had apparently been lost or misplaced and could not be located by the West Virginia Department of Motor Vehicles. He further informed the Court that the documents given to counsel for Defendant constituted all documents in the possession of the Government and that if additional documents were forthcoming the same would be furnished to defense counsel without requiring further motion.

The United States Attorney then stated that he intended to file a motion under Rule 16(c) requesting the Defendant to produce records, papers and documents that he will introduce in the defense of this action and advised the Court that he would prepare and file such motion as of this date if permitted by the Court, which permission was duly granted.

Counsel for Defendant requested the entry of an Order requiring the Government to produce for examination by defense counsel the minutes or notes of the Grand Jury that returned the instant indictment, as well as a list of witnesses who appeared before the Grand Jury, this being information requested at Item 3 of the Defendant's motion for bill of particulars. The United States Attroney resisted this motion and after argument of counsel it is ordered that the Clerk do furnish a list of the Grand Jurors who were summoned, setting out the ones who were impaneled and sworn and the number who concurred in the finding of this indictment; that after this information is made available to Defendant then he shall have a one-week period thereafter within which to furnish any authorities he may desire the Court to consider relative to the qualification of the Grand Jury. The Court further directs the attention of both counsel to the case of United States of America v. Costello, 351 U.S. Reports 359.

Thereupon counsel discussed with the Court questions that were pertinent to the Defendant's motion for the return of the property in the possession of the Government that was not embraced within the indictment and this matter was taken under advisement by the Court. It is ordered that the matter of the return of the personal property and the various issues arising therefrom be given additional attention by the parties, as well as the question of the Government's use of the real estate belonging to defendant

and his family. In this connection the Court directs the attention of counsel to the case of State Penitentiary of Maryland v. Haden, 378 U.S. Reports 294.

It is further ordered that any new motions of either party hereto shall be filed by March 25, 1968, and that Defendant shall by that date file all motions deemed appropriate to his defense.

ENTER: This ..... day of ....., 1968.

_____

Judge

MOTION FOR INSPECTION AND DISCOVERY

This 4th day of March, 1968, comes the United States of America, by John H. Kamlowsky, United States Attorney for the Northern Judicial District of West Virginia, and moves the Court that, under the provisions of Rule 16(c), Federal Rules of Criminal Procedure, the defendant provide the United States of America with any and all papers, records, documents and titles, or copies or portions thereof, which the defendant intends to produce at the trial of this matter.

UNITED STATES OF AMERICA

By: /s/ JOHN H. KAMLOWSKY
United States Attorney

MOTION

This day comes the Defendant, Woodrow Yokum, by Bonn Brown and Milford L. Gibson, his counsel, and resists the motion of the United States of America for inspection and discovery under the provisions of Rule 16(c)

of the Federal Rules of Criminal Procedure upon the following grounds:

1. The granting of Defendant's motion for discovery and inspection under Rule 16 and the furnishing of documents, etc., thereunder was not conditioned upon Defendant furnishing any documents or information to the Government so as to place this action within the scope of Rule 16(c) and does not meet the prerequisites to require the making of this information available from the Defendant.

2. To require the Defendant to comply with the Government's request under Rule 16(c) would deny him of his right to remain silent, would violate his privilege against self-incrimination and would deprive him of the protection guaranteed him by the Fifth Amendment of the United States Constitution.

3. Where the liberty of the accused is at stake such as in this instance, such rights as are given him by Constitution and by Statute cannot be taken away from him by procedural rules of Court.

WOODROW YOKUM
By Counsel for Defendant

ORDER

On the 15th of April, 1968, came the United States of America, by John H. Kamlowsky, United States Attorney for the Northern Judicial District of West Virginia, and came the defendant, WOODROW YOKUM, in person and with his counsel, Bonn Brown and Milford L. Gibson. Argument was then had on the motion of the United States of America for the production of documents by the defendant under the provisions of rule 16

(c), F.R. Crim. P., defendant resisting said motion for the reason set out in defendant's written answer. The Court was then advised by the United States that, if the defendant did not produce said documents, the United States of America would not furnish the defendant with any other documents, records or papers that are presently or will come into the government's possession, including the Form 97 previously requested, unless so Ordered by the Court, to which the defendant objected. The Court then advised that it would take this matter under consideration and that the United States of America should produce to the Court, in camera, any records, documents or papers it intends to produce in the trial of this matter, the copies of which have not already been furnished to the defendant. The United States then moved that arraignment be had in this matter and the Court

ORDERED that arraignment be held on April 18, 1968, at 1:30 o'clock, P.M., in the United States District Court, at Elkins, West, Virginia.

ENTER: May 21, 1968

/s/ ROBERT E. MAXWELL
United States District Judge

ORDER

On the 18th day of April, 1968, came the United States of America, by John Marshall, III, Assistant United States Attorney for the Northern Judicial District of West Virginia, and came the defendant, WOODROW YOKUM, in person and with his counsel, Bonn Brown and Milford L. Gibson, for arraignment to Indictment No. 67-91-E. Whereupon, counsel for the defendant waived reading of each count of the indictment and said defendant entered a plea of not guilty to Counts I, II, III, IV, V, VI,

VII, VIII, IX, X and XI of said Indictment. Upon the plea of not guilty, the Government moved that a trial date be assigned and the Court

ORDERED this matter be, and the same is hereby, set for trial on May 20, 1968, at 1:30 o'clock, P.M., in the United States District Court at Elkins, West Virginia.

ENTER: May 21, 1968

/s/ ROBERT E. MAXWELL
United States District Judge

MOTION FOR SUPPRESSION OF EVIDENCE AND RETURN OF PROPERTY

Now comes the Defendant, Woodrow Yokum, in person and by his attorneys, Bonn Brown and Milford L. Gibson, and moved that property described in Count 4 of the indictment, described as 1000 binoculars, be returned to the Defendant and that this evidence be suppressed on the ground under Rule 41(e) of Federal Criminal Procedure that this property was obtained under unlawful search and seizure in that the search warrant issued by Henry K. Higginbotham was based on an insufficient affidavit.

Further that the property seized is not that described in the search warrant. The search warrant sets forth the property described as follows: "That there is now concealed certain property, namely, one Trailer Van manufactured by Gramm Trailer Company, Delphos, Ohio, S/N8528576681, U. S. Navy Registration 97-03770, said trailer contains certain property." The return and inventory shows that there were 17 listed pages of property none of which was described in this search warrant, including the 1000 pairs of binoculars. Therefore the Defendant moves that this evidence be suppressed and the property returned to him.

The Defendant also moved that the property set out under Count 8 of the indictment, consisting of 11,440 feet of 16 gauge one inch copper tubing in lengths of 20 feet each be returned to the Defendant and this evidence be suppressed on Rule 41(e) of the Federal Criminal procedure on the grounds that the affidavit for the issuance of the search warrant was not in the form prescribed by the statute and rule; and,

That the property seized is not that described in the search warrant and the warrant does not sufficiently describe the property to be seized. The warrant says, "That there is now concealed certain property namely one portable generator, Serial No. 1620250, numerous boxes and crates containing miscellaneous property and other property." Therefore the Defendant moves that this evidence be suppressed and returned to him, all in accordance with Rule 41(e).

WOODROW YOKUM, *Defendant*
By Counsel

/s/ MILFORD L. GIBSON
P.O. Box 266
Elkins, West Va. 26241

/s/ BONN BROWN
P.O. Box 511
Elkins, West Va. 26241

Counsel for Defendant.

MOTION FOR NEW TRIAL

Now comes the Defendant, Woodrow Yokum, pursuant to Rule 33 of the Rules of Criminal Procedure and moves the Court for a new trial, assigning the following grounds in support thereof.

1. The Grand Jury which returned the indictment after hearing a part of the evidence was allowed to adjourn for a period of approximately two weeks and then to return to receive additional evidence and then to deliberate on the indictment, all of which action was given statewide publicity.

2. The Petit Jury selected to try this case was chosen from a panel that was not representative of a cross section of the area in which the trial was held.

3. The Court committed error in denying Defendant's request to be heard in chambers upon preliminary motions and matters which normally would be heard out of the presence of the jury.

4. The Court erred in denying Defendant's motion to suppress evidence relating to Count IV of the indictment based upon the illegality of the search warrant.

5. The Court erred in not admonishing the trial jury to ignore the newspaper, radio and television broadcasts relating to the progress of the trial.

6. The pre-indictment and pre-trial, as well as the trial publicity, available through news media created an atmosphere which so prejudiced the public that the Defendant could not get a fair trial.

7. The Court erred in failing to grant Defendant a judgment of acquittal as to all of the counts against him which were not proven by the Government, this motion having been made at the conclusion of the Government's case and again at the conclusion of all of the evidence.

8. The argument of Defendant's motion for judgment of acquittal received widespread and inaccurate newspaper, radio and television publicity and the Court's ruling there-

on made out of the presence of the jury was also widely publicized.

9. The Court erred in his charge to the jury in the following respects:

A. The charge did not cover the fact that circumstantial evidence should be viewed with caution.

B. The charge relating to Count IV of the indictment improperly assumed that the possession of the property immediately after the alleged taking was in the Defendant when in fact the evidence shows that he was not in possession of the property until over one year after the alleged date of taking.

C. The charge did not advise the jury to ignore statements of the press, television or other news media in reaching their verdict.

D. By including in the charge a statement from the statute that "any property made or being made under contract for the United States or any department or agency thereof" should be considered as Government property, which in this instance would cause the jury to believe that the statute applied to such property regardless of who had it in possession.

E. The Court's charge did not confine the jury's deliberation to consideration of elements of a Federal crime but was so general as to permit speculation based upon the inadequacies, etc., of State records and the violation of State statutes by the Defendant and others.

10. The Court committed error in admitting into evidence the Xerox copy of an alleged letter from the Defendant to Elmer West dated October 17, 1966, and in permitting the United States Attorney to use the same as an

integral part of proof of guilt in his closing argument to the jury.

11. The statement by the United States Attorney in final summation, "This case is not over. The F.B.I. is still investigating," was prejudicial to the Defendant and improper.

12. The Government in the presentation of its case failed to prove any Federal offense committed on behalf of the Defendant and specifically did not show the existence of criminal intent or knowledge on his behalf at the time of the alleged wrongdoing.

13. The title to all property and vehicles allegedy transferred, transported or sold had been transferred by the Government prior to any transportation or sale.

14. There is no showing of any acts of fraud committed by the Defendant nor of any profit or reward being received by him from his alleged actions.

WOODROW YOKUM, *Defendant*
By Counsel

/s/ BONN BROWN
48½ Randolph Avenue
Elkins, West Virginia
Counsel for Defendant

/s/ MILFORD L. GIBSON
Box 266
Elkins, West Virginia
Counsel for Defendant

ORDER

On the 8th day of July, 1968, came the defendant, WOODROW YOKUM, in person and with his counsel,

Bonn Brown and Milford L. Gibson. Milford L. Gibson, co-counsel for said defendant, advised the Court that the defendant objected to the letter introduced into evidence as Government's Exhibit No. 68 for the reason that the defense was not supplied with a copy of such Exhibit and the defense was of the opinion that they were entitled to such under the provisions of Rule 16 F.R.C.P. The Court then advised the parties that each had until July 22nd to present any additional matters concerning said objection as they deemed material.

After due consideration of the arguments on the Motions of the defendant previously had, and nothing being further offered in evidence on the objection as to said letter, the Court does hereby

ORDER that the defendant's Motion For New Trial and Motion For Judgment Of Acquittal are overruled for the reasons stated in open court, to which action of the Court the defendant objects and excepts.

ENTER: JUL 9 1968

/s/ ROBERT E. MAXWELL
United States District Judge

ORDER

On this 5th day of August, 1968 came the attorney for the government and the defendant appeared in person and[1] by Bonn Brown and Milford Gibson, counsel.

---

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if re-

IT IS ADJUDGED that the defendant upon his plea of[2] not guilty to Counts 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 and a finding of guilty by a jury has been convicted of the offenses of: Interstate Transportation of a Stolen Motor Vehicle (T. 18, Section 2312, USC) on counts 1, 5, 6, 7, 10 and 11; Transportation of Stolen Property in Interstate Commerce (T. 18, Section 2314, USC) on count 4; Theft of Government Property (T. 18, Section 641, USC) on counts 2, 3 and 9 as charged[3] in Indictment No. 67-91-E and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] THREE (3) YEARS EACH on counts 1, 5, 6, 7, 10 and 11; FOUR (4) YEARS EACH on counts 2, 3, 4 and 9, and that all of said sentences are to run concurrent with each other and the Court further specifies that Woodrow Yokum may become eligible for parole at such time as the Board of Parole may determine under the provisions of Title 18, Section 4208(a)(2), USC.

IT IS ADJUDGED that[5]

IT IS ORDERED that the Clerk deliver a certified copy of

---

quired. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ ROBERT E. MAXWELL
United States District Judge

The Court recommends commitment to[6]

/s/ THOMAS F. STAFFORD,
Clerk.

GOVERNMENT'S EXHIBIT NO. 7

STANDARD FORM 97-A SEPTEMBER 1961 EDITION PRESCRIBED BY GSA REG 1-V-306.01 97-204-01	AGENCY RECORD COPY OF THE UNITED STATES GOVERNMENT CERTIFICATE OF RELEASE OF A MOTOR VEHICLE	CERTIFICATE NO. B -06417

The undersigned DEPARTMENT or AGENCY of the UNITED STATES GOVERNMENT certifies that the motor vehicle described herein, the property of the UNITED STATES GOVERNMENT, has been transferred this 21st day of February 19 66, to the Transferee designated herein; and that this is the first transfer of such vehicle in ordinary trade and commerce subsequent to acquisition thereof by the UNITED STATES GOVERNMENT.

TRANSFEREE (Name of dealer, individual, etc.)				ADDRESS OF TRANSFEREE	
The State Rd. Commission of W. Va.				Equipment Division Buckhannon, West Virginia	
MAKE OF VEHICLE	YEAR	SERIES OR MODEL		ENGINE NO.	MANUFACTURER'S SERIAL NO.
Chrysler					9123191809
TYPE OF VEHICLE*				KIND OF BODY	
Automobile		USA#1J1684		Sedan	
NUMBER OF CYLINDERS	HP. (SAE)	FUEL	NUMBER OF AXLES	NUMBER OF DUAL WHEELS	TIRES
		Gasoline			☐ SOLID ☒ PNEUMATIC
WEIGHT (Shipping)		NO. OF PASSENGERS	WHEELBASE	MANUFACTURER'S RATED CAPACITY	SALE PRICE
TRANSFEROR (Accountable office; i.e., department or agency; subunits and address)					
Property Disposal Office, Bldg. S-1976, Meade Rd., Ft. Belvoir, Va.					
SIGNATURE MORDEN H. FAIRFAX				TITLE Property Disposal Officer	

GOVERNMENT'S EXHIBIT NO. 5

STANDARD FORM 122
REVISED ... 1961
PRESCRIBED BY
GSA REG. ...

TRANSFER ORDER
EXCESS PERSONAL PROPERTY

REQ. NO. WV-33-66
2. DATE Feb 16, 1966

3. TO: GENERAL SERVICES ADMINISTRATION
UTILIZATION AND DISPOSAL SERVICE
PERSONAL PROPERTY DIVISION
7th & D Streets, SW
Washington, D. C. 20407

4. ORDERING AGENCY (Full name and address)
U.S. Bureau of Public Roads
P.O. Box 410
Buckhannon, West Virginia 26201

5. HOLDING AGENCY (Name and address)
Property Disposal Officer
Fort Belvoir, Virginia

6. SHIP TO (Consignee and destination)
The State Road Commission of W. Va.
Equipment Division
Buckhannon, West Virginia

7. LOCATION OF PROPERTY
Same as above.

8. SHIPPING INSTRUCTIONS
The State Road Commissionof W. Va. will transport items with their own facilities. Advise when ready.

9. ORDERING AGENCY APPROVAL
SIGNATURE [signature] DATE 2/16/66
TITLE Hiway Supervisor

10. APPROPRIATION SYMBOL AND TITLE
13-20x8102(02)

11. ALLOTMENT

12. GOVERNMENT B/L NO.

13. PROPERTY ORDERED

GSA OR HOLDING AGENCY NO. (a)	ITEM NO. (b)	DESCRIPTION (Include noun name, FSC Group and Class, Condition Code and, if available, Federal Stock Number) (c)	UNIT (d)	QUANTITY (e)	ACQUISITION COST UNIT (f)	ACQUISITION COST TOTAL (g)	TOTAL FAIR VALUE (If any) (h)
V-9944	1	Chrysler sedan, 4 dr USA#1J1684	ea	1	-	$2875.00	
		Exc. Rpt. A2604-6046-L	(146)				

Pgd. 2-21-68 D.S.

Govt.
Ex. No. 5
Identified 5-21-68
Filed 5-21-68
Case No. Cr. 67-91-E

14. GSA APPROVAL
SIGNATURE [signature] TITLE Personal Property Utilization Officer DATE FEB 16

FOR GSH USE ONLY	AGENCY AND LOCATION: AGENCY	STATE			FSC	CONDITION	SOURCE CODE

DISTRICT COURT'S CHARGE TO JURY

Although you as jurors are the sole judges of the facts, you are duty bound to follow the law as stated in the instructions of the Court and apply the law so given to the facts as you find them from the evidence before you.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The defendant and the public expect that you will carefully and impartially consider all of the evidence, follow the law stated by the Court and reach a just verdict, regardless of the consequences.

The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a clean slate, that is, with no evidence against him. And the law permits nothing but legal evidence before the jury to be considered in support of any charge against a defendant.

So, the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason

and common sense and arising from the state of the evidence. It is rerely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.

A reasonable doubt exists in any case when after careful and impartial consideration of all of the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge.

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against a defendant and does not create any presumption or permit any inference of guilt.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case. Statements and arguments of counsel are not evidence in the case.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted, and all applicable presumptions stated in these instructions. Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A Presumption is a conclusion which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary.

A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury are bound to find in accordance with the presumption.

Unless and until outweighed by evidence to the contrary, the law presumes that a person is innocent of crime or wrong; that a witness speaks the truth; that official duty has been regularly performed; that private transacions have been fair and regular; that the ordinary course of business has been followed; that things have happened according to the ordinary course of nature and the ordinary habits of life; and that the law has been obeyed.

Six counts of the indictment in this case charge the violation of section 2312 of Title 18 of the United States Code, and section 2 of Title 18 of the United States Code.

Section 2312 of Title 18 of the United States Code provides in part that:

> "Whoever transports in interstate commerce a motor vehicle knowing the same to have been stolen, shall be guilty of an offense against the laws of the United States."

It is charged in Count 1 of the indictment in this case that on or about the 16th day of February 1966, Woodrow Yokum did transport a stolen motor vehicle, that is, one black 1962 model 4 door Chrysler Imperial Sedan, vehicle identification number 9123191809, from Fort Belvoir, State of Virginia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew the motor vehicle to have been stolen.

Count 5 of the indictment in this case charges that on or about the 14th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor vehicle, that is, one 1962 Chevrolet Corvair Convertible, serial number 20967W258726, from Washington, District of Columbia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 6 of the indictment in this case charges that on or about the 14th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor vehicle, that is, one 1963 Pontiac 4-door Sedan, serial number, 363-W-40273, from Washington, District of Columbia, to Randolph County, State of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 7 of the indictment in this case charges that on or about the 14th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor vehicle, that is, one 1962 Pontiac Bonneville Convertible, serial number 862W10701, from Washington, District of Columbia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 10 of the indictment in this case charges that on or about the 30th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor ve-

hicle, that is, one 1953 FWD Fire Truck, serial number 400881, from Norfolk, State of Virginia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 11 of the indictment in this case charges than on or about the 4th day of October, 1965, Woodrow Yokum did willfully and unlawfully, transport a stolen motor vehicle, that is, one 1958 Chrysler 4-door Sedan, vehicle identification number LY1-9744, from Alexandria, State of Virginia, to Philippi, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

The portion of the statute that I have read to you, involving the six counts of the indictment that I have just referred to, is known as the National Motor Vehicle Theft Act.

The term "interstate" as used in the statute, and in the six counts of the indictment in this case, means "commerce between one state and another state."

The word "stolen" as used in the statute, and in the six counts of the indictment in this case which allege the crime of interstate transportation of stolen motor vehicles, includes all felonious takings of motor vehicles, including any wrongful or dishonest taking whereby a person obtains property belonging to another with the intent to deprive the owner of the rights and benefits of ownership.

Two essential elements are required to be proved in order to establish the six offenses of interstate transportation of stolen motor vehicles charged in the indictment:

(1) The act or acts of transporting or causing to be be transported in interstate commerce the stolen motor vehicles as charged; and

(2) Doing such act or acts willfully and with knowledge that the respective motor vehicles have been stolen.

Such offense has been completed when the two elements just stated are proved.

As stated before, the burden is upon the prosecution to prove beyond all reasonable doubt every essential element of the crime charged, in each of the six counts of this indictment that allege a violation of the federal law relative to interstate transportation of stolen motor vehicles.

Possession of property recently stolen, if not satisfactorily explained, is a circumstance from which the jury may reasonably draw the inference and find that the person in possession knew the property had been stolen.

Possession in one state of property recently stolen in another state, if not satisfactorily explained, is a circumstance from which the jury may reasonably draw the inference and find, in the light of surrounding circumstances, that the person in possession not only knew it to be stolen property, but also transported or caused it to be transported in interstate commerce.

The term "recently" is a relative term which has no fixed meaning. Whether property may be considered as recently stolen depends upon the nature of the property and all of the facts and circumstances shown by the evidence. The longer the period of time since the theft, the weaker the inference which may be drawn from unexplained possession.

As to each of the six counts that allege the crime of interstate transportation of a stolen motor vehicle, if you find from the evidence in this case, as to each of these six counts, beyond a reasonable doubt, that the motor vehicle described in each of the counts of the indictment was in fact stolen, and was in fact transported in interstate commerce as charged, and that, while recently stolen, the motor vehicle was in the possession of the defendant in another

state than that in which is was stolen, the jury would be justified in drawing from those facts the inference that the motor vehicle was transported, or caused to be transported, in interstate commerce, by the defendant, with knowledge that it was stolen, unless possession of the recently stolen property by the defendant in such other state is explained to the satisfaction of the jury by the facts and circumstances in evidence.

It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence warrant any inference which the law permits the jury to draw from possession of recently stolen property. If any possession the accused may have had of recently stolen property is consistent with innocence, then the jury should acquit the defendant of such of the indictment counts as to which this would be applicable.

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

> "Whoever commits an offense against the United States, or willfully aids, abets, counsels, commands, induces, or procures its commission is punishable as a principal.
>
> and
>
> Whoever willfully causes an act to be done which if directly performed by him, or another would be an offense against the United States is punishable as a principal."

Every person who thus willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and purposely and with specific intent to fail to do some act the law re-

quires to be done; that is to say, with evil motive or bad purpose either to disobey or disregard the law.

In order to aid and abet another to commit a crime, it is necessary that a defendant willfully associate himself in some way with the criminal venture; and that he willfully participates in it as something he wishes to bring about; and that he willfully seek by some action of his to make it succeed.

The defendant in this case is also charged in one count of the indictment herein, with the offense of transporting stolen goods in interstate commerce, in violation of section 2314, Title 18, United States Code, and section 2, Title 18, United States Code.

In this particular count 4 of the indictment in this case charges that on or about the 16th day of February, 1965, Woodrow Yokum did willfully and unlawfully transport from the U.S. Naval Supply Depot at Mechanicsburg, State of Pennsylvania, into Randolph County, State of West Virginia, in the Northern District of West Virginia, certain property belonging to the United States, to-wit, 1000 pairs of binoculars of the value in excess of $5,000, that is $165,000, said binoculars having been obtained from the said United States Naval Supply Depot by fraud, and the said Woodrow Yokum at the time of the said transportation well knew that the said binoculars belonged to the United States, and had been obtained by fraud.

To convict the defendant of this crime the United States must prove beyond a reasonable doubt that the defendant transported the property of a value of $5,000 or more, with knowledge that the property was stolen, converted or taken by fraud.

It is not necessary for the United States to prove that defendant participated in the original wrongful taking or

conversion of the property, or that he knew the value of it. Neither is it necessary to prove that he personally transported the property or knew that it would be transported. It is sufficient if he caused, motivated or induced such transportation across state lines.

A most essential element of the crime charged in count 4 of the indictment in this case is that the binoculars were stolen, converted, or taken by fraud.

The terms "stolen, converted, or taken by fraud," include any wrongful appropriation of the property of another,

This may be done by forcible taking, by taking without permission, by inducing the owner to part with the property by false pretenses, fraud or swindling, or by converting to one's own use property of another, originally possessed lawfully.

It is not necessary that such wrongful taking or conversion be done by defendant personally. The manner in which he acquired possession of such property should be considered only in determining whether he had knowledge that the property was stolen, converted or taken by fraud.

Another essential element of the crime charged in count 4 of the indictment in this case, namely, the interstate transportation of stolen property, is that the items transported must have a value of $5,000 or more. Value ordinarily means market value, or the price a willing buyer would pay to a willing seller at the time the property was stolen.

If there is no market value for the goods the jury should consider other reasonable methods of determining whether the stolen items have a monetary value equivalent to $5,000 or more. If replacement value is used as a standard, it should mean replacement at the time and place the goods were willfully taken, less depreciation in value, if any, that

occurred during the period that the property was owned by the United States, and prior to its being stolen.

In the crime of interstate transportation of stolen property, possession of property recently stolen in another state, which is not satisfactorily explained, or falsely explained by defendant, is a circumstance from which the jury may draw the inference that the defendant in possession knew that the property had been stolen.

Counts 2, 3, and 9 of the indictment in this case embrace the final category of offenses, namely, the unauthorized sale of government property in violation of section 641, Title 18, United States Code.

Count 2 of the indictment in this case charges that on or about the 14th day of October, 1966, at Randolph County, in the Northern District of West Virginia, Woodrow Yokum did willfully and unlawfully sell and convey certain property belonging to the United States, to-wit, one black 1962 model 4 door Chrysler Imperial Sedan, vehicle identification number 912-3191809, to Minter B. Roebaugh, d/b/a Beverly Auto Sales, said Chrysler Imperial Sedan having a value in excess of $100, and said Woodrow Yokum at the time of said sale well knew that he did not have the authority to sell said Chrysler, that said Chrysler was the property of the United States, and that the said Chrysler had been stolen from the United States.

Count 3 of the indictment in this case charges that on or about the 24th day of July, 1965, at Randolph County, in the Northern District of West Virginia, Woodrow Yokum did willfully and unlawfully sell and convey certain property belonging to the United States, to-wit, one 1953 International five ton wrecker, USMC number 210701, serial number 2794, model number R-201, engine number 39162, to Thurman A. Daniels, d/b/a Daniels Body Shop, said International truck having a value in excess of $100

and the said Woodrow Yokum at the time of said sale well knew that he did not have the authority to sell said International truck and that said International truck was the property of the United States, and that said International truck had been stolen from the United States.

Count 9 of the indictment in this case charges that on or about the 10th day of August, 1964, at Randolph County, in the Northern District of West Virginia, Woodrow Yokum did willfully and unlawfully sell and convey certain property, belonging to the United States, to-wit, one 1951 Ward La France Fire Truck, engine number 80457, having a value in excess of $100, and the said Woodrow Yokum at the time of said sale, well knew that he did not have the authority to sell said fire truck, that said fire truck was the property of the United States and that said fire truck had been stolen from the United States.

The applicable portion of section 641, Title 18, United States Code, is as follows:

> "Whoever without authority, sells, anything of value of the United States or of any department or agency, thereof, or any property made for the United States or any department or agency thereof; shall be guilty of an offense against the United States."

To convict the defendant of the crimes charged in these three counts of the indictment, the United States must prove beyond a reasonable doubt that the defendant sold or disposed of property of the United States without authority to do so and with knowledge that the property was owned by and was stolen from the United States.

The phrase "property of the United States" as used in the indictment in this case includes any thing of value owned by the United States or any of its departments or

agencies, or any property made for the United States or its departments or agencies.

An essential element of the crime of theft and subsequent sale of government property is the specific intent by defendant to defraud the United States by appropriating to his own use, or to the use of another, property which he knew belonged to the United States. If the defendant did not have this specific intent he cannot be found guilty of this crime. Specific intent is a question of fact to be determined by the jury from a consideration of all of the facts and circumstances in the case.

The United States must prove the value of the property stolen, because the law provides a greater penalty if the value of the property exceeds $100. Value under this law means face, par or market value, or cost price, either wholesale or retail, whichever is greater. The value of the property stolen is a question of fact to be determined by the jury.

Where a defendant has offered evidence of good reputation for truth and veracity, the jury should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's reputation for truth and veracity may be sufficient to warrant an inference of good character as to those traits of character.

Evidence of a defendant's reputation, as to those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt; since a jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

You as jurors, are the sole judges of the credibility of the witnesses, and the weight their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the manner in which the witness

testifies, by the character of the testimony given, or by contrary evidence.

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief.

Consider each witness's intelligence, motive, state of mind, demeanor and manner, while on the stand. Consider any relation each witness may bear to each side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause a jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood.

If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you think it may deserve.

In every crime, there must exist a union or joint operation of act and intent.

The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

With respect to lesser offenses, if it be shown that a person has knowingly committed an act denounced by the law as a crime, intent may be presumed from the voluntary doing of the forbidden act.

But with respect to a major crimes, such as are charged in this case, specific intent must be proved before there can be a conviction.

Specific intent, as the term itself suggests, rquires more than a mere general intent to engage in certain conduct.

A person who knowingly does an act which the law forbids, or knowingly fails to do an act which the law requires, intending with bad purpose either to disobey or disregard the law, may be found to act with specific intent. An act or failure to act is done knowingly, if done voluntarily and purposely, and not because of mistake or inadvertance or other innocent reason.

Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eyewitness account on the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may be intent or lack of intent to commit the offense charged.

It is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. So, unless the contrary appears from the evidence, the jury may draw the inference that the defendant intended all the consequences as one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted by the defendant.

In determining the issue as to intent, the jury are entitled to consider any statements made or acts done or omitted by the defendant, and all facts and circumstances in evidence which may aid determination of his state of mind.

During the course of these instructions the word "possession" has been employed. To assist your application of

the term to this case, you should know that the law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct, physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has the power and the intention a given time to exercise dominion or control over a thing, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share the actual or constructive possession of a thing, their possession is joint.

If you find from the evidence beyond a reasonable doubt that the defendant, either alone or jointly with others, had actual or constructive possession of the respective items of property described in the several counts of the indictment in this case, then you may find that such property, considered separately, and as to each count of the indictment in this case, was in the possession of the accused within the meaning of the words "possession" as used in these instructions.

You will note that the indictment charges that the offense in each of the counts therein was committed "on or about" a certain date. It is not necessary that the proof establish with certainty the exact date of the alleged offense. It is sufficient if the evidence shows beyond a reasonable doubt that the alleged offense was committed on a date reasonably near the date alleged.

You are here to determine the guilt or innocence of the defendant from the evidence before you. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So if the evidence convinces you beyond a reasonable doubt of the guilt of the defendant, you should so find, even though you may believe one or more other persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence, you should acquit the defendant.

As has earlier been brought to your attention, this is a multiple count indictment. A separate crime or offense is charged in each count of the indictment in this case. Each offense and the evidence applicable thereto should be considered separately.

The fact that you may find the defendant guilty or not guilty of one of the offenses charged should not control your verdict with respect to any other offense charged.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans, you are judges; judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Upon retiring to the jury room, select one of your number to act as foreman. This foreman will preside over your deliberations and will be your spokesman in court.

For your convenience, forms of verdict have been prepared.

There will be one verdict for each of the ten counts that remain in the indictment. Count 8 has not been eluded to or mentioned in this case, because prior to the trial of this case, the Government dismissed this count by making a motion to nollie count 8. So count 8 will not be considered by you one way or the other.

Now, the form of verdict for count 1, submitted for your convenience reads as follows: We the jury find the defendant Woodrow Yokum—guilty—not guilty of the offense charged in count number 1 of the within indictment.

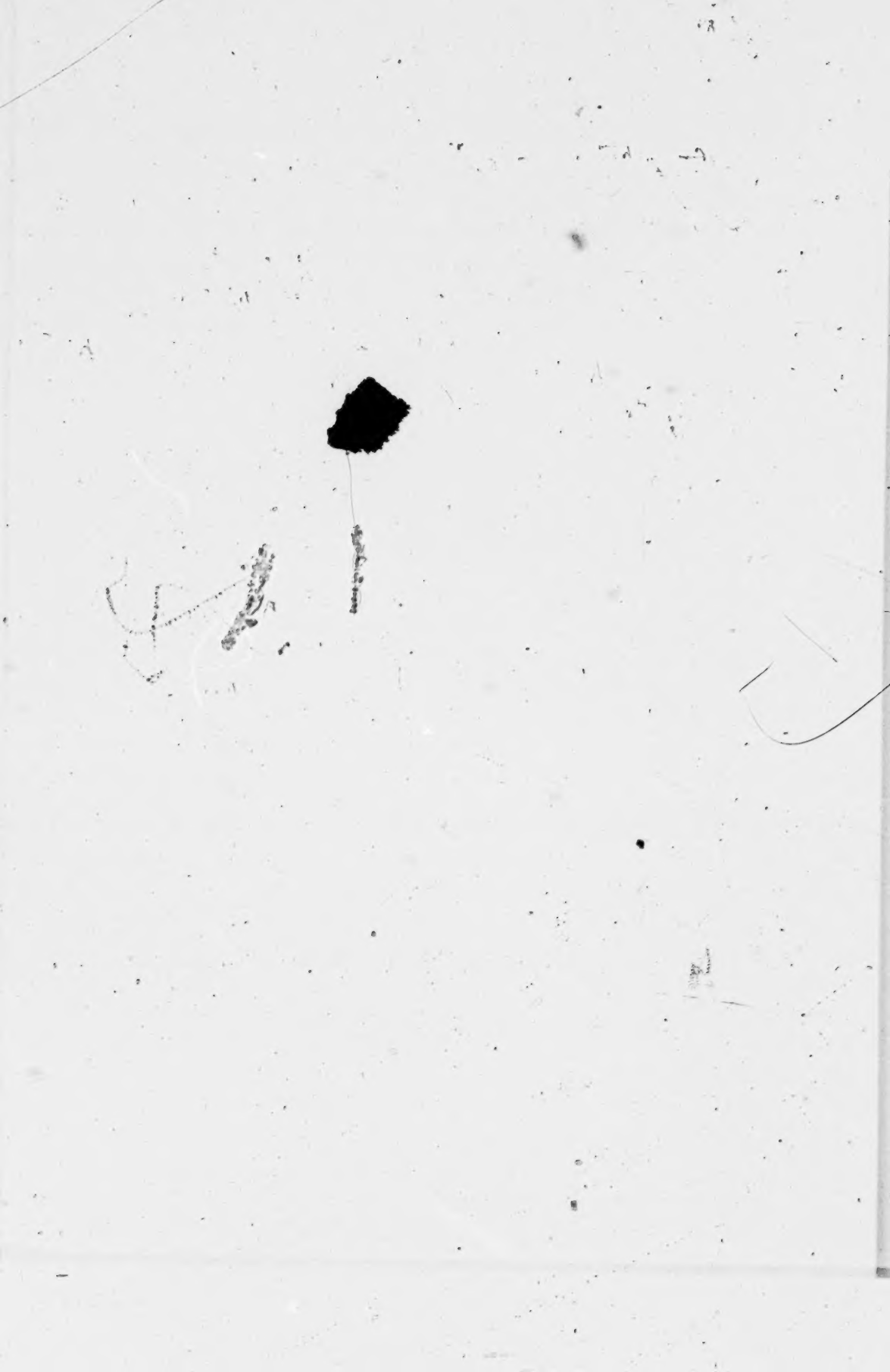
As to count 2, we the jury find the defendant Woodrow Yokum—guilty—not guilty of the offense charged in count 2 of the within indictment and to further find that the value of the property mentioned in count 2 of the indictment does —does not have a value in excess of $100.

With the exception of enumerating the number 3 in the next form, the form is the same as in counts 2 and 4. It is the same as I read for the form for those two counts.

The form is the same for count 5 as was for count number 1, except it says count 5 instead of count 1 and counts 6 and 7 are the same verdict forms as I read for 1, except the numbers there are 6 and 7 instead of 1.

Count numbered 9 is the same as the count 2 verdict form that I read to you, except for the number 9 in it. Count 10 is the same as the first count and count 11 is the same as 1 and 10.

You will take these forms to the jury room and when you have reached an unanimous agreement as to your verdict, you will have your foreman strike out the inapplicable word or words, date and sign the form, state the verdict upon which you agree as to each count of the indictment in this case, and then return with your verdict to the courtroom.



INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statement	2
Argument	5
Conclusion	10

CITATIONS

Cases:	
Abel v. *United States*, 362 U.S. 217	6
Chimel v. *United States*, 395 U.S. 752	6
Cooper v. *California*, 386 U.S. 58	6
Glasser v. *United States*, 315 U.S. 60	8
Holland v. *United States*, 348 U.S. 121	9
Johnson v. *United States*, 293 F. 2d 539, certiorari denied, 375 U.S. 888	6
Marshall v. *United States*, 360 U.S. 310	6
Seymour v. *United States*, 369 F. 2d 825	6
Sheppard v. *Maxwell*, 384 U.S. 333	6
Statutes and rules:	
18 U.S.C. 641	2
18 U.S.C. 2312	2
18 U.S.C. 2314	2
18 U.S.C. 4208(a)(2)	2

373-374—69

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 845

WOODROW YOKUM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 2–6) is reported at 417 F. 2d 253.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 1969. The petition for a writ of certiorari was filed on November 14, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a motion to suppress evidence seized under a search warrant was properly denied.

2. Whether petitioner was prejudiced by publicity given to his case.

3. Whether the evidence was sufficient to support a verdict of guilty.

4. Whether the court adequately instructed the jury.

5. Whether admission of a xeroxed copy of a letter from petitioner to his supervisor was proper.

STATEMENT

After a jury trial in the United States District Court for the Northern District of West Virginia, petitioner was found guilty on six counts of interstate transportation of stolen motor vehicles in violation of 18 U.S.C. 2312, three counts of unlawful sale of property stolen from the United States, in violation of 18 U.S.C. 641, and one count of interstate transportation of property (one thousand pairs of binoculars) obtained from the United States by fraud, in violation of 18 U.S.C. 2314. Petitioner was sentenced to concurrent three year terms of imprisonment on the six counts charging violation of 18 U.S.C. 2312 and concurrent four year terms on the remaining counts. It was further provided that petitioner would be eligible for parole at such time as determined by the board of parole, pursuant to 18 U.S.C. 4208(a)(2). (Pet. App. 21). The court of appeals affirmed as to all counts except Count 3 (Pet. App. 2–6).[1]

[1] Count 3 charged unlawful sale of property belonging to the United States in violation of 18 U.S.C. 641. The court of appeals found that the property dealt with in this count (a dump truck) did not belong to the United States at the time it was sold (Pet. App. 5–6).

Petitioner was employed as a highway supervisor by the State Road Commission of West Virginia. His primary responsibility was to procure, for the use of his employer, surplus federal property. The approved procedure for acquiring this property was as follows: When a federal agency had surplus property, it submitted to the General Services Administration a form indicating the description of the property and its location (Tr. 213, 214, 228, 249). The GSA then made a list of this property available to all federal agencies and appropriate state agencies. Under the Federal Highway Act, some of this property was available to the State Road Commission of West Virginia for use on the state highway system (Tr. 161) through the West Virginia Bureau of Public Roads. (Petitioner testified that to order this equipment he would send a letter to the Bureau of P... ...ting the Bureau to order t... Road Commission (Tr. ... eligible for such equi... prove the request. Th... then present the a... item was available ... cerning priority, t... Bureau's request (Tr. ... Commission picked up ... acquisition form would ... Public Roads by the Commi... then bill the state for the pro... Commission would not be billed ... the form was sent to the Bureau by ... Commission

By failing to send a copy of the acquisition form to the Bureau of Public Roads, petitioner avoided having West Virginia billed for the items obtained. The Bureau would not have any records on these items because petitioner did not order the equipment through the Bureau as required. Petitioner would order the property on the standard form, listing the ordering agency as "the U.S. Bureau of Public Roads," P.O. Box 410, Buckhannon, West Virginia, for shipment to the State Road Commission of West Virginia (Tr. 162, Govt. Exh. 5, Pet. App. 23). There was no such federal agency, and the address given was the address of the Equipment Division of the State Road Commission to which petitioner was assigned (Tr. 141, 146). If the property was available, petitioner would either pick it up himself (Tr. 113, 1156–58, Govt. Exh. 43) or have someone else accept delivery and bring the vehicle into West Virginia (Tr. 588–591).

Petitioner sold two of the vehicles thus obtained—*i.e.*, a Chrysler (Govt. Exh. 1) and a fire truck (Tr. 680–681, Govt. Exh. 47). The purchaser made the checks for these vehicles payable to petitioner. Two other automobiles were titled in petitioner's name (Govt. Exhs. 38, 39) and a third was titled in the name of petitioner's wife's first cousin (Govt. Exh. 40). One thousand pairs of binoculars, valued at $165,000, improperly obtained in Pennsylvania from the federal government, were moved at petitioner's direction to a farm in West Virginia belonging to one of petitioner's relatives (Tr. 318–319). The

Bureau of Public Roads at Hagerstown, Maryland, and the State Road Commission had no record concerning these binoculars (Tr. 424).

ARGUMENT

1. On January 19, 1967, after the commencement of the investigation regarding petitioner's procurement of the vehicles and other items, an FBI agent visited the farm belonging to Oren Yokum, one of the petitioner's relatives. He requested and received from Mrs. Oren Yokum permission to examine the exterior of the trailer-van (Tr. 334). Examination revealed that the trailer-van was painted Marine Corps green and had a Navy identification plate and a Navy serial number (Tr. 335). On February 10, 1967, this agent executed an affidavit for a search warrant, detailing the above facts, and concluding that the agent knew of no government record reflecting the lawful release of the trailer by the government (Court Exh. 1). The affidavit and the warrant specifically described the trailer but did not describe the property inside the van. These documents stated that both the trailer and the property contained therein had been stolen from the United States Government. A subsequent search of the van revealed that it contained the one thousand pairs of binoculars.

Petitioner's contention that the search was invalid because the binoculars were not particularly described in the warrant is erroneous. The warrant did not have to describe the property contained in the trailer because the trailer itself was stolen and was properly

subject to seizure. Since the agents had the right to seize the trailer, they had the right to search its interior. Cf. *Cooper* v. *California,* 386 U.S. 58. Having found one thousand pairs of binoculars in the course of a search of this government vehicle the agents were not required to return to the Commissioner to get another warrant describing the binoculars or, in the alternative, to dump the binoculars on the ground before they removed the trailer. The binoculars were evidence of another crime found in a stolen government vehicle; they were thus properly subject to seizure. See *Abel* v. *United States,* 362 U.S. 217, 238; *Seymour* v. *United States,* 369 F. 2d 825 (C.A. 10); *Johnson* v. *United States,* 293 F. 2d 539 (C.A.D.C.), certiorari denied, 375 U.S. 888.

Petitioner's reliance on *Chimel* v. *United States,* 395 U.S. 752 is misplaced. The Court in *Chimel* was concerned with the scope of a search incident to arrest and not with the search of a vehicle under a search warrant.

2. Petitioner was not prejudiced by the publicity surrounding his arrest and trial. Each case involving adverse publicity must turn on its own special facts. *Marshall* v. *United States,* 360 U.S. 310. Here the newspaper articles, which are on file with the Clerk of this Court, do not reflect the type of permeating and vindictive coverage which this Court condemned in *Sheppard* v. *Maxwell,* 384 U.S. 333. These articles reflect no more than ordinary coverage of a newsworthy event.

Petitioner did not request a continuance or a change of venue because of the alleged adverse publicity. Nor

does a careful reading of the record support the contention that the trial judge refused to instruct the jury to disregard these articles in spite of repeated requests for such instructions by defense counsel. The only request that could be found was the objection to the court's failure to give such an instruction in its charge. The court refused the instruction, stating that the problem had already been covered by other instructions that the jury was to consider only legal evidence—that is, evidence adduced at the trial—and that the jury was not to be swayed by public opinion (Tr. 1450, 1458).

Indeed, the trial judge indicated his sensitivity to the problem of publicity during his *voir dire* examination of the jurors when he inquired if any of the publicity concerning the case would affect their opinion as to petitioner's guilt or innocence (Tr. 27). When one juror indicated that because of the publicity he had formed an opinion, he was examined in detail concerning his opinion and was ultimately dismissed (Tr. 27–31). In addition, during the trial the judge repeatedly admonished the jury to remain aloof from all outside influences relating to the trial (Tr. 94, 223, 401, 593–594, 662, 729–730, 784, 952, and 1344). The trial judge specifically told them not to read news accounts of the trial when he said:

> Perhaps it would be well to mention that you abstain from the reading of newspaper accounts or any news accounts on radio or television reports of this trial because your decisions in this matter have to be based solely on what occurs in the courtroom and it has to be on the evi-

> dence submitted to you in court as I will talk to you about in my instructions and from no other source, and that is why it is so important that you remain aloof from any influences or anything that would lead to a judgment either consciously or subconsciously . . . [Tr. 785.]

This warning by the court adequately protected petitioner from any prejudice due to the media reports on the trial.

3. Considered in the light most favorable to the government (*Glasser* v. *United States*, 315 U.S. 60, 80), the evidence was sufficient to sustain a verdict of guilty (see Statement, *supra*, p. 2). Petitioner appears to contend that he could not be guilty because the GSA passed title to the equipment to him. However, the government's evidence showed that title to the property could only be released when authorized by the Bureau of Public Roads (Tr. 169), and petitioner does not allege that he had such an authorization. Petitioner does not contend that he did not order the equipment or that he did not cause it to be transported across state lines. Finally, the jury was instructed that the government had to prove the value of the stolen vehicles was over $100 (Pet. App. 35).

4. The court instructed the jury, *inter alia*, that:

> A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely

> and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.
>
> A reasonable doubt exists in any case when after careful and impartial consideration of all of the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. [Pet. App. 24–25.]

The court adequately instructed the jury on reasonable doubt; it was not required—as petitioner contends—to instruct that where the government's evidence is circumstantial it must exclude every reasonable hypothesis other than that of guilt. See *Holland* v. *United States*, 348 U.S. 121, 139–140. In any event, the court did instruct that:

> As a general rule, the law makes no distinction between direct and circumstantial evidence, but requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case. [Pet. App. 25.]

5. The admission of the copy of a letter from petitioner to his supervisor, Elmer West, was not error. The letter was on State Road Commission stationery and the petitioner's name and title were typed on the second page (Govt. Exh. 68). Mr. West identified the letter as a copy of the one petitioner had given to him (Tr. 1335) in response to his request that petitioner clarify, in writing, the procedure used in acquiring surplus federal property (Tr. 1334–1335). The absence of the original letter was accounted for when West stated that he did not know where the original was located (Tr. 1335).

Petitioner, when confronted with the letter, denied having written it but testified that some of the statements in the letter were correct (Tr. 1198–1200). The letter was identified and the absence of the original explained. Therefore, it was properly left for the jury to determine the weight and credibility to be accorded the letter.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

JEROME M. FEIT,
KAREN L. ATKINSON,
Attorneys.

JANUARY 1970.

LIBRARY
REME COURT, U. S.

Supreme Court of the United States

October Term, 1969

No. 845

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ROBERT G. PERRY
Suite 1701
Charleston National Bank Plaza
Charleston, West Virginia 25301
Counsel for Petitioner

TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	2
Statutory Provisions Involved	2
Reasons For Reapplication	2
Evidence And Argument	4
Conclusion	7

TABLE OF CASES

Chimel v. State of California, 23 L.Ed. 2d 689; 89 Supreme Court	3
Harris v. U.S., 10 Circuit 151; Fed. 2d 837	3
Smith, et als. v. Carrington, 4 Cranch 63; 2 L.Ed. 550	6
U.S. v. Rabinowitz, 70 S. Cr. 430; 339 U.S. 56; 94 L.Ed 653	2

Supreme Court of the United States

October Term, 1969

No. 845

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable Chief Justice and the Associate Justices of The Supreme Court of the United States:

Petitioner, Woodrow Yokum, respectfully presents his petition for rehearing of the above styled cause for a Writ of Certiorari to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered on October 16, 1969, in case 12740.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears in the Appendix of the original petition for writ of certiorari at (2A).

No written opinion was rendered by the Trial Court.

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the Trial Court in part was entered on October 16, 1969. This Court's jurisdiction is invoked under Rule 28, U.S.C., Section 1354(1) and by virtue of Rule 19(b) of the rules of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Title 18, Section 641, United States Code; Title 18, Section 2312, United States Code; Title 18, Section 2314, United States Code.

REASONS FOR REAPPLICATION

The Petitioner respectfully presents this petition for rehearing and says that he is relying on his original petition and appendix thereto for certiorari heretofore filed in this court. The questions presented therein and the statement of case as outlined in the original petition are made part of this petition for rehearing and application for writ of certiorari.

In addition, he further respectfully represents that as reasons for granting the writ, apparently the Courts, neither the District Court nor Circuit Court of Appeals, have taken cognizance of the fact that this case has been a political case from start to finish and has been front page headlines on all newspapers in West Virginia, radio and television from its original inception, including the decision of this court in denying the petition for writ of certiorari.

(1) Additional reasons for granting this writ, the motion to suppress the search warrant should have been sustained. When the motion relating to count 4 for the suppression of evidence was denied, the Government and the Trial Judge relied on the case of *U.S.* v. *Rabinowitz,* 70

S. Ct. 430; 339 U.S. 56; 94 L. Ed. 653, and *Harris* v. *U.S.*, 10 Circuit 151, Fed. 2d 837, in particular the *Rabinowitz* case was principally relied on by the Government in its brief and in its argument to the Circuit Court of Appeals, which case was specifically overruled by this court in the case of *Chimel* v. *State of Calif.*, 23 L. Ed. 2d 689; 89 Supreme Court ..... and the *Chimel* case was never presented either to the District Court or Circuit Court of Appeals, because it had not been decided as yet and the *Rabinowitz* case was treated as the controlling case, although the *Chimel* case was decided before the opinion was handed down in the instant case by the Fourth Circuit.

If this court will look at the evidence of Watkins, F.B.I. Agent, was of a general exploratory nature and was not made incident to the arrest, and he did not know when he made the affidavit whether this van was Government property or whether it even belonged to the Government, nor did he know what the van contained, so if this is not a shotgun approach to a search warrant which has been frowned upon repeatedly by the United States Supreme Court, then the writer of this petition does not understand the meaning of the shotgun approach.

The petitioner in this case has had many items of property seized by the Government that had nothing to do with what he is charged. His wife's farm has been confiscated and used by the Government, even at the present time, even though his counsel early in the proceedings made a motion for a return of the property and a release of the farm. Certainly this petitioner is entitled to some consideration and relief from such Gestapo tactics.

(2) The adverse publicity given to the Petitioner from the date of his arrest, to the trial, to the appeal before the Fourth Circuit Court of Appeals, and to the application

and petition to this court, has continued without any letup, and widespread through all types of news media, including newspapers, radio and television. The trial court did not admonish the jurors who were not locked up, and had access to local newspapers, radio and television, not to listen to accounts of this trial which was reported in detail though certainly grossly distorted in favor of the Government as to the proceedings and evidence.

The Court's ruling made out of the presence of the Jury were given wide publicity and it is a fair assumption that the jurors had knowledge of such rulings or at least of the news reports dealing with them.

EVIDENCE

If this Court will look to the evidence presented by the Government to prove conviction of elements of either the Dyer Act or as to criminal intention, it will become readily apparent to it that at no time in the case were any statutory rules or regulations introduced to show that the U.S. Bureau of Public Roads was the holder of title to the items Defendant is accused of stealing or transporting, or that they had any control whatsoever over such items other than as a forwarding body so far as Government forms are concerned.

In fact the evidence clearly shows that General Service Administration was the agency that released the property and that the particular agency that held title to the surplus property, for example, the U.S. Marine Corps, which held title and possession of the wrecker. None of the property set out in the indictment ever belonged to the Bureau of Public Roads. Certainly, if there were statutes or regulations as testified by Henke, then the Government had the duty and obligation to introduce these into record. It was not the responsibility of Petitioner to do so, nor was it his

duty to prove himself innocent. Without exception, when questioned or cross-examined, every one of the General Service Administration employees knew the capacity of the petitioner, knew his address and said that the rules and regulations were carried out by him in the release of each item of the particular property. They further say that they were the only agency that had this authority. For example, Hall, who served as the Property Disposal Officer at Cameron Station, Virginia, for many years, said he filled the forms out, delivered the property sometimes days in advance of signature by the General Service Administration and that this was standard procedure and in accordance with the rules and regulations and he had never heard anything about the Bureau of Public Roads having any jurisdiction over the surplus property. It seems strange that if the Bureau of Public Roads had such regulations and laws that a man who had served the length of time that Hall had knew nothing about such requirements for release of surplus property.

There is no question from the record that the petitioner had followed the procedure that had been outlined to him by the General Service Administration and which was followed by many other states besides West Virginia in property procurement. The contention that the Government always gets paid for this surplus property was not borne out by the evidence. Most of it was considered of no value and was so delivered to the respective state agency.

How the Defendant can be found guilty of Count 9 of the indictment which pertains to a 1951 Ward La France, which was legally released to CAP at Alexandria, Virginia, which release was in accordance with all rules and regulations, and which same 1951 Ward La France vehicle was sold according to the Government's own testimony to Irving Miller and paid for as salvage metal is beyond understand-

ing. Certainly, to say that the Petitioner should be convicted because of the slipshod methods of the U.S. Government and its various agencies is a far cry from justice. It is interesting to note that since this case developed that these rules and regulations were drastically revised. The Petitioner would ask the Court why the need for revision if they were as clearcut as the Government contended in this case.

One of the most damaging things to the Petitioner and a matter that was clearly reversible error, was the permission by the court to allow the Government on their "Exhibit 68" to introduce a xerox copy of an unsigned copy of a letter into evidence, particularly when it had never been supplied to counsel as required in accordance with Rule 16 of the Federal Rules of Criminal Procedure. The evidence shows that Elmer West testified to the effect when cross-examined that he did not know where the original was or whether he had ever received it. In fact West was so vague about this letter that it was difficult to determine whether there was any such letter ever in existence. His testimony was specifically contradicted by the Petitioner, particularly that part that had to do with procedure for securing surplus property. It seems a little strange that after seven years of securing surplus property, that the petitioner would write such a letter to a man who admitted he knew nothing about how it was being acquired; but what was far worse than this error was for the trial court to permit it to be introduced as to the credibility of the petitioner and then to let the District Attorney in his closing argument use it for the direct proof of the guilt of this Petitioner, and as to his knowledge as to proper procedure in acquiring property. John Marshall, the original Chief Justice of the Court, in the case of *Smith et als.* v. *Carrington,* 4 Cranch 63; 2 L. Ed. 550, outlined the manner in which a copy is admissible when the original is not available.

This Petitioner has been harassed and investigated by the Federal Bureau of Investigation, the Veterans Administration, the FAA, and numerous State Agencies of West Virginia, as well as political leaders in both the Democratic and Republican parties, and as it was stated in the very beginning of the petition, this case has been a political football in which the petitioner's rights, the property rights of his wife, and his personal liberty have been placed in jeopardy. All that the Petitioner respectfully requests of this court is that he be given a hearing on his petition for a writ in order that he might get a fair and impartial trial, as he is entitled to under the U.S. Constitution and the statutes and laws of the United States.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for rehearing be granted and upon further consideration the judgment of the District Court for the Nothern Distict of West Virginia be reviewed and his conviction set aside, as well as the decision by the Judges of the United States Court of Appeals for the Fourth Circuit, dated October 16, 1969.

Respectfully submitted,

ROBERT G. PERRY
Suite 1701
Charleston National Bank Plaza
Charleston, West Virginia 25301
Attorney for Petitioner

I, Robert G. Perry, Attorney for the above named Petitioner, do certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated this 12th day of March, 1970.

ROBERT G. PERRY